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PART 130—SMALL BUSINESS DEVELOPMENT CENTERS

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§ 130.100 Introduction.

(a) *Objective.* The SBDC Program creates a broad-based system of assistance for the small business community by linking the resources of Federal, State and local governments with the resources of the educational community and the private sector. Although SBA is responsible for the general management and oversight of the SBDC Program, a partnership exists between SBA and the recipient organization for the delivery of assistance to the small business community.

(b) *Incorporation of amended references.* All references in these regulations to OMB Circulars, other SBA regulations, Standard Operating Procedures, and other sources of SBA policy guidance incorporate all ensuing changes or amendments to such sources.

§ 130.110 Definitions.

Applicant organization. An entity, described in § 130.200(a), which applies to establish and operate an SBDC network.

Application. The written submission by a new applicant organization or an existing recipient organization explaining its projected SBDC activities for the upcoming budget period and requesting SBA funding for use in its operations.

Area of Service. The State or territory, or portion of a State or territory (when there is more than one SBDC in a State or territory), or the District of Columbia, in which an applicant organization proposes to provide services or in which a recipient organization provides services.

Budget period. The 12-month period in which expenditure obligations are incurred by an SBDC network, coinciding with either the calendar year or the Federal fiscal year.

Cash Match. Non-Federal funds allocated specifically to the operation of the SBDC network equalling no less than fifty percent of the Federal funds. Cash Match includes direct costs committed by the applicant or recipient organization and sponsoring SBDC organizations, to the extent that such costs are committed as part of the verified, specific, line item direct costs prior to funding. Cash Match does not include

indirect costs, overhead costs or in-kind contributions.

Cognizant Agency. The Federal agency, other than SBA, from which a recipient organization or sponsoring SBDC organization receives its largest grant or greatest amount of Federal funding, and from which it obtains an indirect cost rate for budgetary and funding purposes, applicable throughout the Federal government.

Cooperative Agreement. The written contract between SBA and a recipient organization, describing the conditions under which SBA awards Federal funds and recipient organizations provide services to the small business community.

Cosponsorship. A "Cosponsorship" as defined in and governed by §8(b)(1)(A) of the Act and SBA's Standard Operating Procedures.

Counseling. Individual advice, guidance or instruction given to a small business person or entity.

Direct costs: "Direct costs" as defined in Office of Management and Budget (OMB) Circulars A-21, A-87 and A-122. Recipient organizations must allocate at least 80 percent of the Federal funds provided through the Cooperative Agreement to the direct costs of program delivery.

Dispute. Dispute means a program or financial disagreement which the recipient organization requests be handled with SBA in a formal manner.

Grants and Cooperative Agreement Appeals Committee. The SBA committee, appointed by the SBA Administrator, which resolves appeals arising from financial Disputes between a recipient organization and SBA.

Grants Management Specialist. An SBA employee designated by the AA/SBDCs who is responsible for the financial review, award, and administration of one or more SBDC Cooperative Agreements.

In-kind contributions. Property, facilities, services or other non-monetary contributions from non-federal sources. See OMB Circular A-87, A-102, or A-110, as appropriate.

Indirect costs. "Indirect costs" as defined in Office of Management and Budget (OMB) Circular A-21, A-87 or A-122.

Lead Center. The entity which administers and operates the SBDC network.

Lobbying. Lobbying as described in OMB Circulars A-21, A-87 and A-122, and Pub. L. 101-121, section 319.

Overmatched Amount. Non-Federal Contributions to SBDC project costs, including cash, in-kind contributions and indirect costs, in excess of the statutorily required amount.

Program Announcement. SBA's annual publication of requirements which an applicant or recipient organization must address in its initial or renewal application.

Program income. Income earned or received by the SBDC network from any SBDC supported activity as defined in Attachment D of OMB Circular A-110 and Attachment E of OMB Circular A-102.

Program manager. An SBA employee responsible for overseeing the operations of one or more SBDCs.

Project officer. An SBA employee who negotiates the annual Cooperative Agreement and monitors the ongoing operations of an SBDC.

Project period. The period of time, usually in twelve (12) month increments, during which the SBDC network operates, beginning on the day of award and continuing over a number of budget periods.

Recipient organization. The name given to an applicant organization after funding is approved and the applicant organization enters into a Cooperative Agreement. The recipient organization receives the Federal funds and is responsible for establishing the Lead Center.

Recognized Organization. The organization whose members include a majority of SBDCs and which is recognized as an SBDC representative by SBA in accordance with §21(a)(3)(A) of the Small Business Act, 15 U.S.C. 648(a)(3)(A).

SBDC Director. The full-time senior manager designated by each recipient organization and approved by SBA.

SBDC network. The Lead Center and SBDC service providers.

SBDC service providers. SBDC network participants, including the Lead Center, subcenters (at times referred to as regional centers), satellite locations, and any other entity authorized by the

recipient organization to perform SBDC services.

Specialized Services. SBDC services other than Counseling and Training.

Sponsoring SBDC organizations. Organizations or entities which establish one or more SBDC service providers as part of the SBDC network under a contract or agreement with the recipient organization.

Training. The provision of advice, guidance and instruction to groups of prospective and existing small business persons and entities, whether by in-person group sessions or by such communication modes as teleconferences, videos, publications and electronic media.

§ 130.200 Eligible entities.

(a) *Recipient Organization.* The following entities are eligible to operate an SBDC network:

- (1) A public or private institution of higher education;
- (2) A land-grant college or university;
- (3) A college or school of business, engineering, commerce or agriculture;
- (4) A community or junior college;
- (5) An entity formed by two or more of the above entities; or
- (6) Any entity which was operating as a recipient organization as of December 31, 1990.

(b) *SBDC Service Providers.* SBDC service providers are not required to meet the eligibility requirements of a recipient organization.

§ 130.300 Small Business Development Centers (SBDCs). [Reserved]

§ 130.310 Area of service.

The AA/SBDC shall designate in writing the Area of Service of each recipient organization, consistent with the State plan. More than one recipient organization may be located in a State or Territory if the AA/SBDC determines it is necessary or beneficial to implement the Program effectively and to provide services to all interested small businesses.

§ 130.320 Location of lead centers and SBDC service providers.

(a) The recipient organization must locate its Lead Center and SBDC service providers so that services are read-

ily accessible to small businesses in the Area of Service.

(b) The locations of the Lead Center and the SBDC service providers will be reviewed by SBA as part of the application review process for each budget period.

§ 130.330 Operating requirements.

(a) The Lead Center must be an independent entity within the recipient organization, having its own staff, including a full-time SBDC Director.

(b) A Lead Center must provide administrative services and coordination for the SBDC network, including program development, program management, financial management, reports management, promotion and public relations, program assessment and evaluation, and internal quality control.

(c) The Lead Center shall be open to the public throughout the year during the normal business hours of the recipient organization. Anticipated closures shall be included in the annual renewal application. Emergency closures shall be reported to the SBA Project Officer as soon as is feasible. Other SBDC service providers shall be open during the normal business hours of their sponsoring SBDC organizations.

(d) The Lead Center and other SBDC service providers must have a conflict of interest policy applicable to their SBDC consultants, employees, instructors and volunteers.

(e) The SBDC network shall comply with 13 CFR parts 112, 113 and 117, which require that no person shall be excluded on the grounds of age, color, handicap, marital status, national origin, race, religion or sex from participation in, be denied that benefits of, or otherwise be subjected to discrimination under, any program or activity for which the recipient organization received Federal financial assistance from SBA.

§ 130.340 SBDC services and restrictions on service.

(a) *Services.* The SBDC network must provide prospective and existing small business persons and entities with Counseling, Training and Specialized Services, concerning the formation, financing, management and operation of

small business enterprises, reflecting local needs. The recipient organization shall primarily utilize institutions of higher education to provide services to the small business community. To the extent possible, SBDCs shall use other Federal, State, and local government programs that assist small business. Services periodically should be assessed and improved to keep pace with changing small business needs.

(b) *Access to Capital.* (1) SBDCs are encouraged to provide counseling services that increase a small business concern's access to capital, such as business plan development, financial statement preparation and analysis, and cash flow preparation and analysis.

(2) SBDCs should help prepare their clients to represent themselves to lending institutions. While SBDCs may attend meetings with lenders to assist clients in preparing financial packages, the SBDCs may not take a direct role in representing clients in loan negotiations.

(3) SBDCs should inform their clients that financial packaging assistance does not guarantee receipt of a loan.

(4) SBDCs may not make loans, service loans or make credit decisions regarding the award of loans.

(5) With respect to SBA guaranty programs, SBDCs may assist clients to formulate a business plan, prepare financial statements, complete forms which are part of a loan application, and accompany an applicant appearing before SBA. Unless authorized by the SBA Administrator with respect to a specific program, an SBDC may not advocate, recommend approval or otherwise attempt in any manner to influence SBA to provide financial assistance to any of its clients. An SBDC cannot collect fees for helping a client to prepare an application for SBA financial assistance.

(c) *Special emphasis initiatives.* From time to time, SBA may identify portions of the general population to be targeted for assistance by SBDCs. Support of SBA special emphasis initiatives will be negotiated each year as part of the application process and included in the Cooperative Agreement when appropriate.

§ 130.350 Specific program responsibilities.

(a) *Policy development.* SBA will establish Program policies and procedures to improve the delivery of services by SBDCs to the small business community, and to enhance compliance with applicable laws, regulations, OMB Circulars and Executive Orders. In doing so, SBA should consult, to the extent practicable, with the Recognized Organization.

(b) *Responsibilities of SBDC Directors.* The SBDC Director shall direct and monitor program activities and financial affairs of the SBDC network to deliver effective services to the small business community, comply with applicable laws, regulations, OMB Circulars and Executive Orders, and implement the Cooperative Agreement. The SBDC Director has authority to control expenditures under the Lead Center's budget. SBDC Directors may manage other programs in addition to the SBDC Program if the programs serve small businesses and do not duplicate the services provided by the SBDC network. However, SBDC Directors may not receive additional compensation for managing these programs. The SBDC Director shall serve as the principal contact point for all matters involving the SBDC network.

§ 130.360 SBDC advisory boards.

(a) *State/Regional Advisory Boards.* (1) The Lead Center must establish an advisory board to advise, counsel, and confer with the SBDC Director on matters pertaining to the operation of the SBDC network.

(2) The advisory board shall be referred to as a State SBDC Advisory Board in an Area of Service having only one recipient organization, and a Regional SBDC Advisory Board in an Area of Service having more than one recipient organization.

(3) These advisory boards must include small business owners and other representatives from the entire Area of Service.

(4) New Lead Centers must establish a State or Regional SBDC Advisory Board no later than the second budget period.

(5) A State or Regional SBDC Advisory Board member may also be a

member of the National SBDC Advisory Board.

(6) The reasonable cost of travel of any Board member for official Board activities may be paid out of the SBDC's budgeted funds.

(b) *National SBDC Advisory Board.* (1) SBA shall establish a National SBDC Advisory Board consisting of nine members who are not Federal employees, appointed by the SBA Administrator. The Board shall elect a Chair. Three members of the Board shall be from universities or their affiliates and six shall be from small businesses or associations representing small businesses. Board members shall serve staggered three year terms, with three Board members appointed each year. The SBA Administrator may appoint successors to fill unexpired terms.

(2) The National SBDC Advisory Board shall advise and confer with SBA's AA/SBDCs on policy matters pertaining to the operation of the SBDC program. The Board shall meet with the AA/SBDCs at least semiannually.

§ 130.400 Application procedure. [Reserved]

§ 130.410 New applications.

(a) If SBA declines to renew an existing recipient organization or the recipient organization declines to re-apply, SBA may accept applications from other organizations interested in becoming a recipient organization. An eligible entity may apply by submitting an application to the SBA District Office in the Area of Service in which the applicant proposes to provide services.

(b) An application for initial funding of a new SBDC network must include a letter by the Governor, or his or her designee, of the Area of Service in which the SBDC will operate, or other evidence, confirming that the applicant's designation as an SBDC would be consistent with the plan adopted by the State government and approved by SBA. No such requirement is imposed on subsequent applications from existing recipient organizations.

(c) The application must set forth the eligible entity or entities proposing to operate the SBDC network; a list of the

Lead Center and other SBDC service providers by name, address and telephone number; the geographic areas to be serviced; the resources to be used; the services that will be provided; the method for delivering the services, including a description of how and to what extent academic, private and public resources will be used; a budget; a listing of the proposed members of the State or Regional Advisory Board and other relevant information set forth in the Program Announcement.

(d) SBA officials may request supplemental information or documentation to revise or complete an application.

(e) Upon written recommendation for approval by the SBA District Director, the proposal shall be submitted to the AA/SBDCs for review.

§ 130.420 Renewal applications.

(a) SBDCs shall comply with the requirements in the annual Program Announcement, including format and due dates, to receive consideration of their renewal applications. The SBA Project Officer, with the concurrence of the Program Manager, may grant an extension. The recipient organization shall submit the renewal application to the SBA office in the District in which the recipient organization is located. The annual Program Announcement will include a timetable for SBA review.

(b) After review by the SBA Project Officer and written recommendation for approval by the District Director, the Program Manager and Grants Management Specialist shall review the renewal application for conformity with the Program Announcement, OMB Circulars and all other statutory, financial and regulatory requirements. SBA officials may request supplemental information and documentation prior to issuing the Cooperative Agreement.

§ 130.430 Application decisions.

(a) The AA/SBDCs may approve, conditionally approve, or reject any application. In the event of a rejection, the AA/SBDCs shall communicate the reasons for rejection to the applicant and the appropriate SBA field office. If the approval is conditional, the conditions and applicable remedies shall be specified as special terms and conditions in

the Cooperative Agreement. Upon approval or conditional approval, the Grants Management specialist may issue a Cooperative Agreement.

(b) In considering the application, significant factors shall include:

(1) The applicant's ability to contribute Matching Funds;

(2) For renewal Proposals, the quality of prior performance;

(3) The results of any examination conducted pursuant to §130.810(b) of these regulations; and

(4) Any certification resulting from any certification program developed by the Recognized Organization.

(c) In the event of a conditional approval, SBA may conditionally fund a recipient organization for one or more specified periods of time up to a maximum of one budget period. If the recipient organization fails to resolve the specified matters to the AA/SBDCs' satisfaction within the allotted time period, SBA has the right to discontinue funding the SBDC, subject to the provisions of §130.700.

§ 130.440 Maximum grant.

No recipient shall receive an SBDC grant exceeding the greater of the minimum statutory amount, or its pro rata share of all SBDC grants as determined by the statutory formula set forth in section 21(a)(4) of the Act.

§ 130.450 Matching funds.

(a) The recipient organization must provide total Matching Funds equal to the total amount of SBA funding. At least 50% of the Matching Funds must be Cash Match. The remaining 50% may be provided through any allowable combination of additional cash, in-kind contributions, or indirect costs.

(b) All sources of Matching Funds must be identified as specifically as possible in the budget proposal. Cash sources shall be identified by name and account. All applicants must submit a Certification of Cash Match and Program Income executed by an authorized official of the recipient organization or any sponsoring SBDC organization providing Cash Match through a subcontract agreement. The account containing such cash must be under the direct management of the SBDC Director, or, if provided by a spon-

soring SBDC organization, its sub-center Director. If a political entity is providing such cash and the funds have not been appropriated prior to issuance of the Cooperative Agreement, the recipient organization must certify that sufficient funds will be available from the political entity prior to the use of Federal dollars.

(c) The Grants Management Specialist is responsible for determining whether Matching Funds or Cash Match meet the requirements of the Act and appropriate OMB circulars.

(d) *Overmatched Amounts.* (1) SBDC are encouraged to furnish Overmatched Amounts.

(2) An Overmatched Amount can be applied to additional Matching Funds requirements necessitated by any supplemental funding increase received by the SBDC during the budget period, as long as the total Cash Match provided by the SBDC is 50% or more of the total SBA funds provided during the budget period.

(3) If used in the manner described in paragraph (d)(2) of this section, such Overmatched Amount is reclassified as committed Matching Funds.

(4) Allowable Overmatched Amounts which have not been used in the manner described in paragraph (d)(2) of this section may, with the approval of the AA/SBDCs, be used as a credit to offset any confirmed audit disallowances applicable only to the budget period in which the Overmatched Amount exists and the two previous budget periods. Such offsetting funds shall be considered Matching Funds.

(e) *Impermissible sources of Matching Funds.* Under no circumstances may the following be used as sources of the Matching Funds of the recipient organization:

(1) Uncompensated student labor;

(2) SCORE, ACE, or SBI volunteers;

(3) Program income or fees collected from small businesses receiving assistance;

(4) Funds or indirect or in-kind contributions from any other Federal source.

§ 130.460 Budget justification.

The SBDC Director, as a part of the renewal application, or the applicant

organization's authorized representative in the case of a new SBDC application, shall prepare and submit to the SBA Project Officer the budget justification for the upcoming budget period. The budget shall be reviewed annually upon submission of a renewal application.

(a) *Direct costs.* Unless otherwise provided in applicable OMB circulars, at least eighty percent (80%) of SBA funding must be allocated to direct costs of Program delivery.

(b) *Indirect costs.* If the applicant organization waives all indirect costs to meet the Matching Funds requirement, one hundred percent (100%) of SBA funding must be allocated to program delivery. If some, but not all, indirect costs are waived to meet the Matching Funds requirement, the lesser of the following may be allocated as indirect costs of the Program and charged against the Federal contribution:

(1) Twenty percent (20%) of Federal contribution, or

(2) The amount remaining after the waived portion of indirect costs is subtracted from the total indirect costs.

(c) *Separate SBDC service provider budgets.* (1) The applicant organization shall include separate budgets for all subcontracted SBDC service providers in conformity with OMB requirements. Applicable direct cost categories and indirect cost base/rate agreements shall be included for the Lead Center and all SBDC service providers, using a rate equal to or less than the negotiated predetermined rate. If no such rate exists, the sponsoring SBDC organization or SBDC service provider shall negotiate a rate with its Cognizant Agency. In the event the sponsoring SBDC organization or SBDC service provider does not have a Cognizant Agency, the rate shall be negotiated with the SBA Project Officer in accordance with OMB guidelines (see OMB Circular A-21).

(2) The amount of cash, in-kind contributions and indirect costs for the Lead Center and all sub-contracted SBDC service providers shall be indicated in accordance with OMB requirements.

(d) *Cost principles.* Principles for determining allowable costs are contained in OMB Circulars A-21 (cost

principles for grants, contracts, and other agreements with educational institutions), A-87 (cost principles for programs administered by State and local governments), and A-122 (cost principles for nonprofit organizations).

(e) *Costs associated with lobbying.* No portion of the Federal contribution received by an SBDC may be used for lobbying activities, either directly by the SBDC or indirectly through outside organizations, except those activities permitted by OMB. Restrictions on and reports of lobbying activities by the SBDC shall be in accordance with OMB requirements, Section 319 of Public Law No. 101-121, and the annual Program Announcement.

(f) *Salaries.* (1) If a recipient organization is an educational institution, the salaries of the SBDC Director and the subcenter Directors must approximate the average annualized salary of a full professor and an assistant professor, respectively, in the school or department in which the SBDC is located. If a recipient organization is not an educational institution, the salaries of the SBDC Director and the subcenter Directors must approximate the average salaries of parallel positions within the recipient organization. In both cases, the recipient organization should consider the Director's longevity in the Program, the number of subcenters and the individual's experience and background.

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

(3) Recruitment and salary increases for SBDC Directors, subcenter Directors and staff members should conform to the administrative policy of the recipient organization.

(g) *Travel.* All travel must be separately identified in the proposed budget as planned in-State, planned out-of-State, unplanned in-State or unplanned out-of-State. All proposed travel must use coach class, apply directly to specific work of the SBDC or be incurred in the normal course of Program administration, and conform to the written travel policies of the recipient organization or the sponsoring SBDC organization. (Per diem rates, including

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lodging, shall not exceed those authorized by the recipient organization.) Transportation costs must be justified in writing, including the estimated cost, number of persons traveling, and the benefit to be derived by the small business community from the proposed travel. A specific projected amount, based on the SBDC's past experience, where appropriate, must also be included in the budget for unplanned travel. A more detailed justification must be given for unplanned out-of-State travel. Any proposed unplanned out-of-State travel exceeding the approved budgeted amount for travel must be submitted to the Project Officer for approval on a case-by-case basis. Travel outside the United States must have prior approval by the AA/SBDCs on a case-by-case basis.

(h) *Dues.* Costs of memberships in business, technical, and professional organizations shall be allowable expenses. The use of Federal funds to pay dues for business, technical and professional organizations shall be permitted, provided that the payments are included in the budget proposal, are approved by the SBA and comply with § 130.460(e).

§ 130.470 Fees.

An SBDC may charge clients a reasonable fee to cover the costs of Training sponsored or cosponsored by the SBDC, costs of services provided by or obtained from third parties, or the costs of providing Specialized Services. Fees may not be imposed for Counseling.

§ 130.480 Program income.

(a) Program income for recipient organizations or SBDC service providers based in universities or nonprofit organizations shall be subject to OMB requirements (see OMB Circular A-110). Program income for recipient organizations or SBDC service providers based in State or local governments shall be subject to OMB requirements (see the provisions of § 7.e and Attachment E of OMB Circular A-102) and 13 CFR 143.25.

(b) Program income, including any interest earned on Program income, must be used to expand the quantity or quality of services, resources or outreach provided by the SBDC network.

It cannot be used to satisfy the requirements for Matching Funds. The Project Officer shall monitor the use of Program income. Any unused Program income will be carried over to a subsequent budget period.

(c) SBDCs must report in detail on standard SBA forms receipts and expenditures of program income, including any income received through co-sponsored activities. A narrative description of how Program income was used to accomplish Program objectives shall be included.

§ 130.500 Funding.

The SBA funds Cooperative Agreements through its internal Letter of Credit Replacement System (LORS), using SBA standard forms to establish and modify letters of credit. SBDCs must use SBA standard forms to draw down funds required to meet their estimated or actual expenses and to submit quarterly cash transactions reports used by SBA to monitor the frequency of drawdowns and the cash-on-hand balance. Repeated drawdowns in excess of immediate cash needs may result in the cancellation of the letter of credit. If interest results from the deposit of any drawdowns in an interest-bearing account, SBDCs, other than State government sponsored SBDCs, must report and return such interest annually to SBA.

§ 130.600 Cooperative agreement. [Reserved]

§ 130.610 General terms.

Upon approval of the initial or renewal application, 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 of the program year covered by the Cooperative Agreement. Administrative requirements are contained in 13 CFR 143 and applicable OMB Circulars.

§ 130.620 Revisions and amendments to cooperative agreement.

(a) *Requests for revisions.* The recipient organization may request at any

time one or more revisions to the Cooperative Agreement on an appropriate SBA form signed by the recipient organization's authorized representative (including a revised budget and budget narrative, if applicable). Revisions will normally relate to changes in scope, work or funding during the specified budget year.

(b) *Revisions which require amendment to Cooperative Agreement.* The Cooperative Agreement shall list the revisions which require Project Officer concurrence, review by the Program Manager and the Grants Management Specialist, approval of the AA/SBDCs and amendment of the Cooperative Agreement. No application for an amendment shall be effective until it is approved and incorporated into the Cooperative Agreement. Revisions which require amendments shall include:

(1) Any change in project scope or objectives;

(2) The addition or deletion of any subgrants or contracts;

(3) The addition of any new budget line items;

(4) Budget revisions and fund reallocations exceeding the limit established by applicable administrative regulations or OMB Circulars, either individually or in the aggregate (see paragraphs (c)(1) and (c)(2) of this section);

(5) Any proposed sole-source or one-bid contracts exceeding the limits established by applicable regulations or OMB Circulars; and

(6) The carryover from one budget period to the next budget period of unobligated, unexpended SBA funds allocable under the Cooperative Agreement to nonrecurring, nonseverable bona fide needs of the SBDC network as provided in applicable OMB Circulars and the annual Program Announcement.

(c) *Revisions which do not require amendments to the Cooperative Agreement—(1) Budget revisions.* Any budget revision, except those which are covered by paragraph (b)(4) of this section. Budget revisions require approval of the SBA Project Officer and the AA/SBDCs as prescribed by applicable OMB Circulars or 13 CFR 143.30.

(2) *Reallocation of funds.* Reallocation of funds must be conducted in accordance with applicable OMB Circulars or

13 CFR 143.30. Additional guidance on this matter may be included in the annual Program Announcement.

§ 130.630 Dispute resolution procedures.

(a) *Financial Disputes.* (1) A recipient organization wishing to resolve a financial Dispute formally must submit a written statement describing the subject of the Dispute, together with any relevant documents or other evidence bearing on the Dispute, to the Grants Management Specialist, with copies to the Project Officer. The Grants Management Specialist shall respond in writing to the recipient organization within 30 calendar days of receipt of the descriptive statement.

(2) If the recipient organization receives an unfavorable decision from the Grants Management Specialist, it may file an appeal with the AA/SBDCs within 30 calendar days of issuance of the unfavorable decision. The AA/SBDCs shall respond in writing to the recipient organization within 15 calendar days of receipt of the appeal.

(3) If the recipient organization receives an unfavorable decision from the AA/SBDCs, it may make a final appeal to the SBA Grants and Cooperative Agreements Appeals Committee (the "Committee") within 30 calendar days of the date of issuance of the AA/SBDCs' written decision. Copies of the appeal shall also be sent to the Grants Management Specialist and the Project Officer.

(4) Appeals must be in writing. Formal briefs and other technical forms of pleading are not required. Requests for a hearing will not be granted unless there are material facts substantially in dispute. Appeals must contain at least the following:

(i) Name and address of the recipient organization;

(ii) The SBA field office;

(iii) The Cooperative Agreement;

(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 a hearing is requested, a statement of the material facts which are substantially in dispute.

(5) The AA/SBDCs or the Committee may request from the SBDC or the District Office additional information or documentation at any stage in the proceedings.

(6) If a request for a hearing 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.

(7) The Committee will reach a decision on the merits of the appeal within 30 days of the hearing date.

(8) The Chairperson, with advice from the Office of General Counsel, shall prepare and transmit a written final decision to the recipient organization with copies to the Grants Management Specialist and the Project Officer.

(9) *Expedited Dispute appeal process.* By an affirmative vote constituting a majority of its total membership, the Committee may shorten response times to attain final resolution of a Dispute before the issuance date of a new Cooperative Agreement. 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 process. If a Dispute affects refunding, the Committee must meet to consider the matter prior to the end of the budget period, provided that the recipient organization has supplied the Committee with all requested documentation.

(b) *Programmatic (non-financial) Disputes.* (1) If a programmatic Dispute is not resolved at the SBA District Office level, the recipient organization may request its submission to the next SBA administrative level having authority to review such matter. The Project Officer shall refer the Dispute in writing, including comments of the SBDC Director, within 15 calendar days of receipt of the request.

(2) If the programmatic Dispute is not resolved at an intermediate SBA administrative level within 15 calendar days of receipt thereof, it shall be forwarded, in writing, to the AA/SBDCs for final resolution. All comments of the SBDC Director must be included in any package forwarded to the AA/SBDCs.

(3) The AA/SBDCs shall transmit a final, written decision to the recipient

organization, the SBDC Director, the SBA Project Officer and other appropriate SBA field office personnel within 30 calendar days of receipt of such documentation, unless an extension of time is mutually agreed upon by the recipient organization and the AA/SBDCs.

§ 130.700 Suspension, termination and non-renewal.

(a) *General.* After SBA has entered into a Cooperative Agreement with a recipient organization, it shall not suspend, terminate or fail to renew the agreement unless SBA gives the recipient organization written notice setting forth the reasons and affording the recipient organization an opportunity for a hearing. Subject to this requirement and the provisions of § 130.700(c) regarding non-renewal procedures for non-performance, the applicable general procedures for suspension and termination are contained in 13 CFR 143.43 and 143.44, and in OMB Circular A-110, Attachment L.

(b) *Causes.* Causes which may lead to suspension, termination, or failure to renew include non-performance, poor performance, unwillingness to implement changes to improve performance, or any of the following reasons:

(1) Disregard or material violation of these regulations;

(2) A willful or material failure to perform under the Cooperative Agreement or under these regulations;

(3) Conduct reflecting a lack of business integrity or honesty;

(4) A conflict of interest causing real or perceived detriment to a small business concern, a contractor, the SBDC or SBA;

(5) Improper use of Federal funds;

(6) Failure of a Lead Center or its subcenters to consent to audits or examination or to maintain required documents or records;

(7) Failure of the SBDC Director to work at the SBDC Lead Center on a full-time basis;

(8) Failure promptly to suspend or terminate the employment of an SBDC Director, subcenter Director or other key employee upon receipt of knowledge by the recipient organization and/

or SBA that such individual is engaging in or has engaged in conduct resulting in a criminal conviction or civil judgment which would cause the public to question the SBDC's business integrity, taking into consideration such factors as the magnitude, repetitiveness, harm caused and remoteness in time of the activity or activities underlying the conviction or judgment.

(9) Violation of the SBDC's standards of conduct as specified in these rules and as established by the SBDC pursuant to these rules; or

(10) Any other cause not otherwise specified which materially and adversely affects the operation or integrity of an SBDC or the SBDC program.

(c) *Non-Renewal Procedure.* (1) Subject to § 130.700(a), when an SBA District Director believes there is sufficient evidence of SBDC nonperformance, poor performance or unwillingness to implement changes to improve performance, under the terms of the Cooperative Agreement or these regulations, the District Director shall notify the SBDC Director and any other appropriate official of the recipient organization of an intention not to approve its renewal application.

(2) Notice can be submitted at any time during the budget period, but normally should be sent no later than 3 months prior to the due date for renewal applications at the District Office.

(3) The notice shall specifically cite the reasons for the intention not to renew. It must allow the recipient organization 60 days within which to change its operations to correct the problems cited in the notice, and to report to the Project Officer, in writing, regarding the results of such changes.

(4) If the recipient organization is unwilling or unable to address the specific problem areas to the satisfaction of the SBA District Office within the 60-day period, the SBA Project Officer shall have ten (10) calendar days after expiration of the 60 days to submit to the AA/SBDCs a written description of the unresolved issues, a summary of the positions of the District Office on the issues, and any supportive documentation.

(5) The AA/SBDCs shall transmit a written, final decision to the recipient

organization, the SBDC Director, the SBA Project Officer and other appropriate SBA field office personnel within 30 calendar days of receipt of such documentation, unless an extension of time is mutually agreed upon by the recipient organization and the AA/SBDCs.

(6) The AA/SBDCs shall consider written documentation of the issues to be resolved, including all relevant correspondence between the Project Officer, District Director and any other SBA personnel and the affected recipient organization. At a minimum, such documentation shall commence with the first written notice of issues invoking the non-renewal procedure. In addition, the AA/SBDCs also may communicate with the recipient organization and appropriate SBA personnel.

(7) If the AA/SBDCs determines that the evidence submitted establishes nonperformance, ineffective performance or an unwillingness to implement suggested changes to improve performance, the AA/SBDCs shall have full discretion to order non-renewal of the SBDC. The SBA District Office shall then pursue proposals from other organizations interested in applying for SBDC designation. The incumbent SBDC shall have until the end of the budget period or 120 days, whichever is longer, to conclude operations and to submit close-out documents to the SBA District Office. Close-out procedures shall conform with applicable OMB Circulars.

(d) *Effect of action on subcenter.* If competing applications are being accepted, a subcenter of the previously funded recipient organization may apply for designation as the recipient organization, so long as the subcenter was not involved in the conduct leading to non-renewal or termination of the former recipient organization.

§ 130.800 Oversight of the SBDC program.

SBA shall monitor and oversee the Cooperative Agreement and ongoing operations of the SBDC network to ensure the effective and efficient use of Federal funds for the benefit of the small business community.

§ 130.810 SBA review authority.

(a) *Site visits.* The AA/SBDCs, or a representative, on notice to the SBDC Director, is authorized to make programmatic and financial review visits to SBDC service providers to inspect records and client files, and to analyze and assess SBDC activities.

(b) *SBA examinations.* SBA examiners shall perform a biannual programmatic and financial examination of each SBDC.

(c) *Certification program.* SBA may provide financial support to the Recognized Organization to develop and implement an SBDC certification program.

(d) *Audits.* The examinations by SBA examiners shall not substitute for audits required of Federal grantees under the Single Audit Act of 1984 or applicable OMB guidelines (see Circulars A-110, A-128 and A-133), nor shall such internal review substitute for audits to be conducted by the SBA Office of Inspector General under authority of the Inspector General Act of 1978, as amended (see § 130.830(b)).

§ 130.820 Reports and recordkeeping.

(a) *Records.* The recipient organization shall maintain the records required for a Lead Center audit and SBA reports. Lead Centers and other SBDC service providers shall maintain detailed, complete and accurate client activity files, specifying counseling, training and other assistance provided.

(b) *Reports.* The recipient organization shall submit client service evaluations and performance and financial reports for SBA review to determine the quality of services provided by the SBDC, the completeness and accuracy of SBDC records, and actual SBDC network accomplishments compared to performance objectives.

(c) *Performance reports.* For recipient organizations in the Program for more than three years, interim reports shall be due 30 days after completion of six months of operation each year; for those recipient organizations in the Program three years or less, reports shall be due 30 days after completion of each of the first three quarters. The annual report shall include the second semiannual or the fourth quarter report and shall be due December 30 for

fiscal year and March 30 for calendar year SBDCs. These reports shall reflect accurately the activities, accomplishments and deficiencies of the SBDC network.

(d) *Financial reports.* The recipient organization shall provide three quarterly and one annual financial report to the SBA Project Officer as set forth in the Program Announcement and the Cooperative Agreement, in compliance with OMB Circulars.

(e) *Availability of records.* As required by OMB (see Circular A-133), all SBDC service provider records shall be made available to SBA for review upon request.

§ 130.830 Audits and investigations.

(a) *Access to records.* Applicable OMB Circulars set forth the requirements concerning record access and retention.

(b) *Audits—(1) Pre-award audit.* Applicant organizations that propose to enter the Program for the first time may be subject to a pre-award audit conducted by or coordinated with the SBA Office of Inspector General. The purpose of a pre-award audit is to verify the adequacy of the accounting system, the suitability of posed costs and the nature and source of proposed Matching Funds.

(2) *Interim or final audits.* The recipient organization or SBA may conduct SBDC network audits. All audits will be conducted according to *Government Auditing Standards*, promulgated by the Comptroller General of the United States.

(i) The recipient organization will conduct its audits as a single audit of a recipient organization pursuant to OMB Circulars A-102, A-110, A-128, and A-133, as applicable.

(ii) The SBA Office of Inspector General or its agents will conduct, supervise, or coordinate SBA's audits, which may, at SBA's discretion, be audits of the SBDC network, even though single audits may have been performed. In such instances, SBA will conduct such audits in compliance with *Government Auditing Standards* and all applicable OMB Circulars.

(c) *Investigations.* SBA may conduct investigations as it deems necessary to

determine whether any person or entity has engaged in acts or practices constituting a violation of the Act, any rule, regulation or order issued under that Act, or any other applicable Federal law.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

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