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SMALL BUSINESS ADMINISTRATION

13 CFR Part 130

[Docket No. SBA-2015-0005]

RIN 3245-AE05

Small Business Development Centers

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or the Agency) issues this final rule to update its regulations for the Small Business Development Centers Program (the SBDC Program or the Program). The Office of Small Business Development Centers has not comprehensively updated its regulations since 1995. This final rule updates and clarifies the regulations, making them more efficient, effective, transparent, and comprehensive, and puts them in alignment with current SBA policy and guidance. This final rule also includes policy and procedural changes identified by the Agency as necessary to preserve the integrity and legislative intent of the Program. Finally, it incorporates updates to conform with administrative requirements, cost principles, and audit requirements for Federal awards (Uniform Guidance).

DATES: *Effective date:* December 7, 2023.

FOR FURTHER INFORMATION CONTACT: Rachel Karton, Program Manager for the SBDC Program, at 202-205-6766 or rachel.newman-karton@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory

The SBDC Program was authorized in 1980 by the Small Business Development Centers Act of 1980 (Pub. L. 96-302, 94 Stat. 833) and is currently codified in section 21 of the Small Business Act, 15 U.S.C. 648 (the Act). According to the Act, the purpose of the

Program is to assist in establishing SBDCs explicitly to provide “management and technical assistance” to small businesses. Section 21(a)(3)(A) requires SBA to consult with the recognized association of SBDCs in any rulemaking action for the Program.

B. History

Title II of the Small Business Development Act of 1980 authorized the SBDC Program at an initial annual funding level of \$8.5 million. The new law specifically provided for Federal funding to be matched one-for-one with non-Federal funds and required an evaluation of the Program to be submitted to Congress by January 31, 1983.

SBA’s Associate Administrator, Small Business Development Centers (AA/SBDC) holds statutory responsibility for the general management and oversight of the SBDC Program by means of a cooperative agreement with each recipient organization. A recipient organization is an institution of higher education or a state agency which receive Federal funds to operate an SBDC. Recipient organizations administer the SBDC Program to provide small businesses and aspiring entrepreneurs with a wide array of technical assistance, help strengthen business performance and sustainability, and enable the creation of new business entities.

The SBDC Program regulations were revised in 1995, *see* 60 FR 31504 (June 13, 1995). The statute authorizing the SBDC Program has since been amended numerous times. The annual notice of funding opportunity has become, for all practical purposes, the document which interprets statutory requirements of the Program and aligns them with current policies and procedures. To maintain consistency in Program administration and implementation, it is necessary to revise the regulations to outline current policies and procedures. Many of the proposed changes are enforced through the current notice of funding opportunity. Therefore, SBA revised Program regulations to incorporate those changes for efficiency and transparency of the SBDC Program.

1. Summary of Advanced Notice of Proposed Rulemaking

SBA published an advanced notice of proposed rulemaking (ANPRM) on April 2, 2015, at 80 FR 17708, seeking

comments on the development of new definitions, clarification of existing program requirements, and the renewal or termination of the notice of award. The ANPRM also solicited comments on international trade counselor certification requirements, required steps for the selection of Lead Center Directors, procedures for international travel, and procedures regarding the determination to effect suspension, termination or nonrenewal of an SBDC’s cooperative agreement.

SBA received 133 comments on this ANPRM, which were considered during the development of the proposed rule. Comments received generally fell into four categories: the role of the District Office, definitions/clarifications, client confidentiality, and the Lead Center Director hiring process. SBA took these comments under advisement when writing the proposed rule.

2. Summary of the Notice of Proposed Rulemaking

The notice of proposed rulemaking was published on December 13, 2022, at 87 FR 76127, with a comment period of 60 days. Following the publication of the NPRM, SBA received approximately 350 comments from a broad range of stakeholders on a diversity of issues relating to the proposed rule. These included comments from the Association of Small Business Development Centers, several Small Business Development Centers, Chambers of Commerce, banking and lending institutions and other economic development organizations.

First, SBA proposed to clarify and define the role of the District Office regarding grant oversight activities by proposing new definitions and procedures throughout program regulations. Second, SBA proposed the addition of 23 new definitions and the revision of existing definitions to explicitly define and clarify the various roles, procedures, documents, and categories of funding. Third, a new section was proposed to codify SBDC client confidentiality requirements under the Act. Finally, the proposed rule added the current process of hiring a Lead Center Director, as outlined in the cooperative agreement. The intent of the proposed rule changes was to make Program operations more streamlined and less onerous for recipient organizations and the Agency and to

align with current practices in the notice of funding opportunity and cooperative agreement. Many of the proposed changes made, which were discussed in comments received through the ANPRM are already required and implemented by the SBDCs; however, these final regulations will codify existing requirements to ensure consistency in Program regulations.

Through the NPRM, the Agency also sought feedback on its existing collection and use of individual SBDC client data.

3. Summary of Final Rule

In this final rule SBA incorporates the Uniform Guidance at 2 CFR part 200, which streamlined and consolidated government requirements for receiving and using Federal awards to reduce administrative burden and improve outcomes; makes various revisions to align the regulations with the text of the SBDC statute; and adopts the proposed rule with changes from the comments received from the publication of the NPRM.

C. Discussion of Comments

SBA received approximately 350 comments on the proposed rule, 50 of which pertained to SBA's new section regarding client confidentiality; 12 regarding the new definition of the accreditation process; 31 comments on the definition of program income; 13 comments on the definition of SBDC Director; 30 comments on new § 130.310(c), Area of service; 20 comments on new § 130.320(e), Operating requirements; 34 comments on § 130.330(b)(5), SBDC services and restrictions on services; 14 comments on revised § 130.350(a)(3) and 6 comments on § 130.350(a)(6) regarding SBDC advisory boards; 15 comments regarding new § 130.370(b), Contracts with other Federal agencies; 11 comments regarding new § 130.460(g)(1) regarding the salaries of the State Directors; and other as stated below. SBA also received comments from The National Center for American Indian Enterprise Development requesting (1) to include "tribal" in § 130.100, Introduction, which SBA has accepted and (2) changes to § 130.200, Eligible entities, to include tribal communities and to add a new paragraph which states, "including a recipient organization that teams with a tribal government, Native American private or non-profit business assistance center or Native American community development financial institution that provides entrepreneurial development counseling to small businesses and entrepreneurs in native

communities." SBA is unable to change this request as eligible entities are outlined in the Small Business Act, 15 U.S.C. 656 and 648. However, SBA supports tribal governments and entities to collaborate with SBDC Lead Center Directors and their networks of Service Centers.

Comments Opposing SBA's Proposed Changes to Various Definitions in § 130.110

a. SBA received 12 comments on the proposed definition of accreditation process. The commenters expressed that the accreditation process evaluates SBDC programs based on standards derived from the Baldrige Performance Excellence Program. The commenters further stated that the accreditation process focuses on overall program improvement that is consistent with the standards providing conditions and recommendations on how to work toward continuous improvement based on observations during the review. The commenters request that SBA revise the definition of accreditation process to include such information.

SBA Response: SBA revised the definition of accreditation process that reflects the commenters suggestions and current use of the term. The new definition states that it's the process by which evaluation and assessment occurs to assist an SBDC with assessing its processes and outlining areas needing improvement by providing recommendations to strengthen delivery of services and assistance.

b. SBA received three comments on the definition of application. The commenters stated that this definition needs to include the term "renewal application."

SBA Response: SBA took these comments under consideration and revised the definition of application to include the term "renewal application."

c. SBA received one comment on the definition of cash match requesting to include waived indirect costs (IDC) in the definition. The commenter further stated that when it states that IDC is not allowed as cash match, adding the verbiage of the waived IDC may be important to include here. Currently, waived indirect costs are included as cash match after 50 percent of actual cash are acknowledged in the agreement.

SBA Response: SBA rejects this comment. As defined in 2 CFR part 200, waived indirect cost is the difference between the total amount of indirect costs charged to a Federal award and the total amount of indirect costs that could have been charged to a Federal award.

The regulation in 2 CFR part 200 refers to this as unrecovered indirect costs.

d. SBA received six comments on the new proposed definition of clearinghouse. The comments state that the definition should be reflected as a collection of management information and a source of market and industrial information that all SBDC programs have access to assist clients. It also collects management information for SBDC networks.

SBA Response: SBA revised the definition of clearinghouse to define the term more clearly and accurately as requested by the commenters. The definition now states that the clearinghouse is a source of market and industry information made available to all SBDC networks to assist clients and supports the exchange of information between SBDCs.

e. SBA received eight comments on the definition of client. The commenters state that there should be a qualifier before the word "entrepreneur" such as "nascent" or "emerging" or "developing" to clarify that this applies to both established business owners and those who plan to start a business.

SBA Response: SBA revised the definition of client to include the word "nascent" before the word "entrepreneur."

f. SBA received 31 comments on the definition of program income. Commenters stated that this revised definition would make almost all funds and not just training registration fees into program income funds and ineligible for use as match. Commenters also stated that if the intent of "sponsorship agreement" was meant to be a co-sponsorship agreement that has been traditionally used with SBDC resource partners when hosting a training event, the language would need to be changed to define "sponsorship agreement."

SBA Response: SBA accepts the comments and refers the reader to the definition of program income as defined in 2 CFR part 200.

g. SBA received 13 comments on the definition of SBDC Director. Commenters stated that the definition should read "at least 75 percent of whose time is allocated to" or at least "100 percent of the individual's time and effort is allocated to the SBDC grant OR other grant programs . . ." An alternative definition that was suggested was a minor grammar change "100 percent of the individual's time and effort is allocated to the SBDC grant or other grant programs . . ."

SBA Response: SBA agrees with the commenters and revised the definition of SBDC Director to state that no less

than 75 percent of the individual's time and effort is allocated to the SBDC grant.

h. SBA received three comments on the definition of specialized services. The commenters stated that this is a vague definition and that it seems to imply that the SBDC must hire an outside consultant for a client which makes no sense.

SBA Response: SBA agrees with the commenters and deleted the words "hiring outside consultants for a client" from the definition.

Comments Opposing SBA's Proposed Changes to Eligible Entities in § 130.200

a. SBA received one comment opposing the proposed change to the eligible entities' requirements of the recipient organization in § 130.200(2)(c). The commenters stated that currently SBDC hosts are colleges or state offices. Instead of restricting SBDC hosts, it would be better to expand hosts to non-governmental entities such as Economic Development offices that may not be a state office. Colleges may not be a good fit for SBDC since they have different missions, and some colleges believe the SBDC they host to conflict with the college's need to increase student enrollment for state funding by head count.

SBA Response: SBA is unable to change this requirement as it required in the Small Business Act, 15 U.S.C. 656 and 648(a)(1), which states, in part, that after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education or a women's business center operating pursuant to section 656 of the title as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The previous sentence shall not apply to an applicant that has its principal office located in the Commonwealth of the Northern Mariana Islands. Therefore, SBA is rejecting this comment.

b. SBA received five comments on new proposed paragraphs (e) and (f) stating that there is a concern that this new requirement will inherently restrict the ability of the SBDC Lead Center to engage partners that are not housed within higher education and that this will limit the ability of the SBDC to reach and serve rural and under-represented populations.

SBA Response: SBA is unable to change this requirement as it required in the Small Business Act, 15 U.S.C. 656 and 648(a)(1), which states, in part, that after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution

of higher education or a women's business center operating pursuant to section 656 of the title as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The previous sentence shall not apply to an applicant that has its principal office located in the Commonwealth of the Northern Mariana Islands. Therefore, SBA rejected this comment.

Comments Opposed to § 130.310—Area of Service

SBA received 30 comments regarding the new proposed paragraph (c) stating that there is a concern that this new requirement will inherently restrict the ability of the SBDC Lead Center to engage partners that are not housed within higher education and that this will limit the ability of the SBDC to reach and serve rural and under-represented populations.

SBA Response: SBA accepts these comments and revised the paragraph to provide that for any applicant commencing after January 1, 1992, the recipient organization must ensure that any new SBDC service centers established within its area of service, to the extent practicable, are primarily housed within institutions of higher education or a Women's Business Center (WBC), operating pursuant to section 29 of the Small Business Act (15 U.S.C. 656) as stated in section 21(a)(1) of the Small Business Act (15 U.S.C. 648(a)(1)).

Comments Opposing SBA's Proposed Changes to § 130.320—SBDC Operating Requirements (Formerly § 130.330)

a. There is one comment opposing the proposed revision to paragraph (a) which states that full time is more than 75 percent. The proposed paragraph states that the Lead Center must be an independent department within the recipient organization, having its own staff, including a full-time SBDC Director.

SBA Response: SBA accepts this comment and revises the paragraph to delete the reference to "full-time."

b. SBA received 20 comments opposing the proposed new paragraph (e) stating that this new paragraph will severely limit the ability of SBDCs to coordinate and collaborate with outside entities. If "any type of organization" can be considered an "SBDC service center" then literally anybody SBDCs work with becomes an SBDC service centers. If the point is to track SBDC performance than this will lead to overcounting, double-counting and taking credit for other people's efforts.

Also, "any funds" could lead to serious problems with outside organizations that have no wish to submit to SBA scrutiny.

SBA Response: SBA accepts this comment and revised the paragraph to narrow the scope of the requirement to read as follows: "Any entity that is using the term 'Small Business Development Center' and under contract with the Lead Center and receiving program funds, whether . . ." and at the end of the paragraph replaces the word "entity" with the words "Service Center."

c. SBA received one comment opposing new paragraph (f) which refers to the technology designation for an SBDC stating that the America's Small Business Development Centers (ASBDC) voted to and did delete the Technology Development Center Designation under the accreditation program in 2022 in response to the growth and availability of technology services in all SBDCs.

SBA Response: SBA deleted paragraph (f) since the new accreditation standards no longer address the technology designation.

Comments Opposing SBA's Proposed Revisions to § 130.330—SBDC Services and Restrictions on Services (Formerly § 130.340)

a. SBA received six comments on newly revised paragraph (a) stating that not all SBDCs provide either training or specialized services. This should be corrected to read "with counseling, and whenever practicable, training and specialized services." An SBDC Lead Center should use and compensate qualified small business vendors as one of its resources. Another commenter stated that this language is unclear and probably a holdover from old statutory language.

SBA Response: SBA accepts the comments and revised the paragraph to include, "to the extent practicable."

b. SBA received one comment on new § 130.330(b)(4) stating that this would be a new requirement and that should the Agency consider this a priority, the Agency should include this information on SBA Form 641.

SBA Response: SBA deleted this paragraph. The remaining paragraphs are redesignated from paragraphs (b)(5) and (6) to paragraphs (b)(4) and (5) in this final rule.

c. SBA received one comment on newly revised § 130.330(b)(3) requesting that SBA define "direct or indirect role."

SBA Response: SBA agrees that an SBDC should not act as an agent for the client. SBA inserted after "however" "SBDCs may not attest to a client's

readiness or creditworthiness to the lending institution either verbally or in writing". Further SBA deleted "neither SBDC staff nor their agents may take a direct or indirect role in representing clients in loan negotiations."

d. SBA received 34 comments on newly revised § 130.330(b)(5) (now § 130.330(b)(4)) stating first, that currently SBDC personnel are asked to participate in many panels that provide input concerning loan applicants. In some states, the State Economic Development Departments rely on SBDC personnel to assist them in evaluating numerous applicants for state assistance. Second, why is one SBA Resource Partner allowed to make loans (Women's Business Centers) while the others are not. According to several studies the biggest challenge faced by minority entrepreneurs is access to capital. Eighty-three percent of minority entrepreneurs have difficulties accessing capital and 76 percent rely on personal and family savings. By serving on panels or board that review loan applications, SBDC personnel become more knowledgeable about the financing trends in their communities and better understand the advising needs of minority owned business. Finally, some SBDC counselors have been members of loan committees of Black and Latino associations and instrumental in widening access to capital for minority entrepreneurs and learning of their technical assistance (advising) needs.

Another commenter stated that SBDC personnel participate on Loan Evaluation Boards where SBDC personnel routinely serve on boards, panels, etc. and that SBDC personnel are covered by SBA's conflict of interest codified at 2 CFR 200.112.

SBA Response: SBA agrees with the commenters and revised the language to state "SBDCs may participate on boards and panels of financial institutions and with outside organizations but may not be involved in any final credit decisions involving SBDC clients or in making or servicing loans."

e. SBA received one comment regarding newly revised § 130.330(b)(6) (now § 130.330(b)(5)) requesting that SBA define the word "advocate," noting the current rules also mention the words "may not advocate" but fails to define it for better universal understanding.

SBA Response: SBA agrees with the commenter and revises the language to include ". . . but may not advocate for, promote, recommend approval . . ." to the paragraph.

f. SBA received seven comments on revised § 130.340(c). Some comments requested that SBA not codify specific focus areas which are likely to change,

and other commenters requested that specific focus areas, such as the "employee-owned business concern, be included in this paragraph.

SBA Response: SBA agrees not to include specific focus areas in the regulations as they could change which is now reflected in the regulation. Focus areas will be included in the notice of funding opportunity (NOFO) each year.

Comments Opposing § 130.340—Specific Program Responsibilities (Formerly § 130.350)

SBA received two comments on the proposed language stating that not all service centers provide training. The District Office and/or program manager may construe this to mean that all centers must provide training and that this would be a new requirement and could place a substantial financial burden on individual service centers.

SBA Response: SBA agrees with the commenters and revises the language in new § 130.340(c)(5) to state that service centers should provide access to training.

Comments Opposing § 130.350—SBDC Advisory Boards (Formerly § 130.360)

a. SBA received 14 comments on proposed § 130.350(a)(3) stating that the proposed language is not supported by sec. 21(j)(1) of the Small Business Act, and may restrict advisory board membership from including local leaders, non-profit organization supporting underserved communities, etc. Further, these advisory boards should consist primarily of representatives from small businesses or associations representing small businesses, as well as local economic development and community organizations. Some SBDCs have small business champions, community development experts, and others with expert skills and experience that the SBDC would like to include as members. The commenters stated that it seems that SBDCs should have the flexibility to make this decision if they do indeed ensure that most of our members are from small businesses or associations representing small businesses.

SBA Response: SBA accepts these comments and did not revise this paragraph.

b. SBA received six comments on proposed § 130.350(a)(6) stating that this language precludes the possibility of advisory boards paying their own costs. Advisory board members are volunteers and often pay their own costs.

SBA Response: SBA accepts this comment and agrees that the proposed language should be changed so that the

Board members can pay for their own costs if they choose to do so. The paragraph now states that the reasonable cost of travel of any Board member for official Board activities may be paid out of the SBDC's budget funds, and Federal and program funds are not to be used to compensate advisory board members for non-travel related expenses such as time and effort.

Comments Opposed to § 130.370—Contracts With Other Federal Agencies

SBA received 15 comments regarding proposed new § 130.370(b) stating that this requirement does not provide any responsibility for SBA to respond. The commenter requests that a five business-day response time from SBA be incorporated into the rule so that SBDCs are not precluded from participating in grant opportunities consistent with their mission.

SBA Response: SBA accepts these comments and adds language to the end of the paragraph with a five-business day response timeframe.

Comments Opposed to § 130.380—Client Privacy

SBA received 50 comments regarding this new section stating they believe that this section compromises the intent of the privacy guidelines currently in practice without outlining specific practices the Agency must comply with to ensure that client data is not unduly disregarded. The commenters want to know who is responsible for the data. Currently, the SBDC controls the client identifying data and submits downloads that contain anonymized information for program performance monitoring. The commenter raises several questions regarding broadening access to the data including how it will impact client privacy and who will be responsible for the making these decisions. Further, the commenter has questions regarding responsibility for granting access to the client data.

Finally, the commenter states that it seems as though Congress included a catch-all provision in the Small Business Act (section 21(a)(7)(C)(ii)) requiring that regulations regarding client privacy "shall, to the extent practicable, provide for the maximum amount of privacy protection." Therefore, any lessening of that amount of privacy requires the SBA to take significant steps to limit disclosure. The proposed rule works in the opposite direction—towards more exposure, not less. The SBA might consider prescribing steps to protect that privacy.

SBA response: SBA rejects these comments. The SBA complies with the statute protecting client privacy. First,

SBA allows clients to opt-in to obtain their contact data for the purpose of communication and surveys. SBDCs cannot refuse service for those who do not opt in; therefore, the client has the right to not disclose the information in most cases excluding the three exceptions. With regards to surveys, SBA will consult with the Recognized Organization prior to implementing a survey to coordinate any timing, minimizing duplicating any surveys that are currently being done, and protect the client's privacy to the maximum extent possible.

SBA believes that the language in the regulation does not compromise the intent of the privacy guidelines currently in place.

The language states that the 641 has an opt-in clause for clients. Clients do not have to provide their information on the form.

Comments Opposed to § 130.410—New Applications

SBA received three comments regarding § 130.410(b) stating that while this paragraph only applies to new applicants to the SBDC program, it does raise issues surrounding foreign campuses, and relationships with other institutions outside the area of operation.

SBA Response: SBA agrees with the comments received and removed the word "region" from the paragraph.

Comments Opposed to § 130.420—Renewal Applications

a. SBA received two comments on § 130.420(c)(2) stating that this appears to be a subjective measure. The commenters asked how will the Agency define how quality is evaluated, or is the intent of this statement that the Agency will review the performance of a program relative to programmatic goals, and relative to prevailing economic conditions during that prior performance period? How will the Agency measure and assess quality of prior performance?

SBA Response: SBA agrees with the commenters and added language to the paragraph that incorporates client satisfaction rates as a deciding factor.

b. SBA received three comments on proposed new § 130.420(c)(5) stating that accreditation recommendations do not require action, they are simply recommendations for consideration and suggests this paragraph be rephrased to cite the current accreditation report, rather than recommendations.

SBA Response: SBA accepts the comment. SBA replaces the word "recommendations" with the word "conditions."

Comments Opposing § 130.450—Matching Funds

a. SBA received three comments on the revision of § 130.450(a) stating that the new language appears to contradict the funding requirement defined in the statute.

SBA Response: SBA accepts this comment and revised the language in this paragraph to state that no more than 50 percent of cash match may be provided through any allowable combination of additional cash, in-kind contributions, or indirect costs.

b. SBA received seven comments regarding revised § 130.450(b) stating that this appears to be an overstep by the Agency that increases the reporting burden of the SBDC, with no discernable benefit to the Agency or the SBDC. Further, different hosts and partners have different requirements and expectations, and it is the responsibility of the SBDC to ensure that these needs are in alignment with the mission and vision of the program and to ensure that the needs are being met, should they wish to continue to receive that match funding.

SBA Response: SBA rejects this comment but clarified the language by adding that only the additional requirements from SBA will need to be identified. Further, SBA requests this information to ensure that the Non-Federal Entity's (NFE) cost sharing and matching are not paid by Federal Government under another Federal award or by other Federal sources. Additionally, the SF424 requires the sources of match. Further, if match sources are not known, SBA could unknowingly approve those funds through the Notice of Award.

c. SBA received one comment on proposed § 130.450(e) stating that matching funds includes in-kind which by definition is not under the direct management of the State Director.

SBA Response: SBA rejects this comment as all funds are and should be under the authority of the State Director. When the SBDC accepts an in-kind donation the management of the SBDC is accountable for accurate reporting. SBA added the following sentence for clarity: "If in-kind contributions are utilized by the SBDC, the State Director or an SBDC Service Center Director is then considered to be in control of those contributions."

d. SBA received one comment on new proposed § 130.450(f) stating that this paragraph is objective and questioning why SBA is vesting special authority in the Grants Management Specialist (GMS). A program either meets the cash

match or not. There is no determination to be made by the GMS or others.

SBA Response: SBA rejects this comment. SBA needs to determine if there is sufficient cash match and has oversight responsibility of that match amount. Additionally, the GMS must determine and evaluate the proposal that proper cash match has been provided.

e. SBA received five comments regarding proposed new § 130.450(g) stating that identifying overmatched funds is problematic. The policy of the university is to not report overmatch so that these funds can be used for leveraging other grants and opportunities. There are also concerns as to how this funding may be spent. This is problematic to the university and the SBDC organization. A benefit of the current SBDC model is that innovative and additional business services complement base SBDC services. Since SBA's funds are limited, SBDCs must seek other sources of capital and should not be limited by this proposed requirement.

SBA Response: SBA accepts this comment and revises the language to include that overmatching expenditures are those which are derived from eligible matching sources; are reasonable, allowable, and allocable to the SBDC program; are over and above the minimum match required to the Federal expenditures; and are included on the required SBDC financial reporting to SBA for the project period.

Comments Opposed to § 130.460—Budget Justification

a. SBA received seven comments regarding new proposed § 130.460(f) about lobbying. The commenter stated that the new paragraph seems to be a gratuitous restatement of current Office of Management and Budget (OMB) guidance. It is also confusing as state lobbying efforts are permitted as the purpose is to "reduce program costs" by obtaining matching funds. Another commenter states that this creates a problem with hosts, regarding state activities. There is an OMB exception regarding state activities "to reduce the cost or avoid material impairment". Also, this violates section 21(a)(3)(B) of Small Business Act ("Circulars shall be incorporated by reference and shall not be set forth in summary or other form in regulations."). The commenter requests that the first sentence should be stricken. Also, lobbying definition is far more complex than this which gives a false impression of "any legislative contact." Finally, another commenter suggests that this section should clearly state, as permitted by OMB, that SBDCs

can engage in lobbying in order to secure adequate public match funding. This will reduce ambiguity among Federal and state stakeholders.

SBA Response: SBA accepts these comments and deleted the paragraph.

b. SBA received 11 comments on revised proposed new § 130.460(f) regarding salaries of the State Directors. The commenters state that this language hasn't been useful in the past when examining host institutions' human resources departments on pay equality issues. The section is neither helpful nor enforceable and should be removed. Basing Center Director salaries on professor salaries does not make sense, particularly for Centers that are not based in higher education institutions. Furthermore, Centers and their Hosts must be able to stay competitive in the marketplace to hire top quality employees. Another commenter stated that if a recipient organization is not an educational institution, the salaries of the SBDC Lead Center 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, the size of the SBDC budget, the number of service centers, and the individual's experience and background.

SBA Response: SBA accepts these comments and deleted the reference to the salary but is keeping the rank in the organization and revising the text to state that where the recipient organization is an educational institution, the SBDC Lead Center Director and the SBDC Service Center Director at a minimum must be equivalent to a full professor and an assistant professor, respectively, in the school or department in which the SBDC is located.

c. SBA received two comments on revised § 130.460(i) regarding travel. The commenter states that this entire section is covered by the omni-circular; the organizations and institutions that host SBDC programs have very clear guidelines on allowable versus unallowable travel expenses.

SBA Response: SBA accepts these comments and will reference 2 CFR 200.475 and NOFO for out-of-state and international travel.

d. SBA received two comments on revised § 130.460(i)(2) regarding coach class travel. The commenter questions what is meant by coach class and how is this different than the omni-circular.

SBA Response: SBA accepts these comments and deleted this paragraph.

e. SBA received one comment on revised § 130.460(j) regarding dues stating that 2 CFR 200.454(a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.

SBA Response: SBA accepts this comment and deleted this paragraph.

Comments Opposing 13 CFR 130.480—Program Income

a. SBA received one comment on revised paragraph (b) regarding the use of program income. The commenter stated that this is a legacy rule that should be reviewed by the Agency and that the CFR sets forth no such limitations. Given the Agency's historical backlog for issuing notices of award along with the difficult Federal budget process, program income can be a valuable resource to provide services to clients during shutdowns or during the time when programs do not have an active Notice of Award due to Agency delays.

SBA Response: SBA rejects this comment based on the Small Business Act section 21(a)(4)(A) which requires the recipient to match 100 percent Federal grant funding not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions. SBA interprets this paragraph to mean that program income, which are fees collected from recipients of assistance, is excluded to be used as matching funds. Further, SBA requests the sources of match to ensure that the NFE's cost sharing and matching are not paid by the Federal Government under another Federal award or by other Federal sources. Additionally, forms submitted to the SBA require the NFE to provide the source of the matching funds. If the funding sources are not provided to the SBA, SBA could unknowingly approve an award with unallowable sources of matching funds.

b. SBA received one comment on proposed new paragraph (e) regarding program income and SBDC sponsored activities. The commenter stated that they do not believe that funds received under a sponsorship agreement should be considered program income and that the requirement is not in 2 CFR 200.80.

SBA Response: SBA accepts this comment and deleted this paragraph.

Comments Opposing 13 CFR 130.490—Property Standard

SBA received one comment opposing this section as it repeats guidelines outlined in 2 CFR part 200.

SBA Response: SBA agrees with this comment and will delete this section from the regulation.

Comments Opposing 13 CFR 130.500—Advances and Reimbursements

SBA received one comment regarding this section stating that this is a restatement of what is in 2 CFR part 200.

SBA Response: SBA accepts this comment and removed the section as it is a restatement of what is in 2 CFR part 200.

Comments Opposing 13 CFR 130.600—Cooperative Agreement

a. SBA received one comment opposing proposed paragraph (b) stating that it is in direct conflict with the Agency's requirement to grant prior approval for contracts in § 130.620.

SBA Response: SBA agrees with the commenter and revised the paragraph to state that SBA reserves the right to disapprove any sub-agreement entered into the by recipient organization with SBDC service center organizations, vendors, or contractors.

b. SBA received one comment opposing proposed paragraph (d) stating that this paragraph is already covered by 2 CFR part 200.

SBA Response: SBA agree with the commenter and deleted this paragraph.

Comments Opposing 13 CFR 130.610—Grant Administration and Cost Principles

a. SBA received one comment regarding the new proposed paragraph (b) stating that this paragraph is already covered by 2 CFR part 200.

SBA Response: SBA agree with the commenter and deleted this paragraph.

b. SBA received one comment regarding the new proposed paragraph (c) stating that there is nothing to preclude SBA to propose additional requirements beyond 2 CFR part 200.

SBA Response: SBA accepts the comments and deleted this paragraph.

Comments Opposing 13 CFR 130.620—Revisions and Amendment to Cooperative Agreements

a. SBA received two comments regarding revised paragraph (a)(2) questioning whether this paragraph is regarding sub-awards or contracts. Additionally, the comments state that this requirement is already covered by 2 CFR part 200.

SBA Response: SBA accepts the comments and deleted this paragraph.

b. SBA received two comments on proposed new paragraph (a)(3) stating that they encourage the regulations to include language describing how SBA will publicize and distribute any supplemental funds it may have and to seek input from SBDCs regarding

distribution of these funds in a way that supports the overall program and/or individual SBDCs. The summary mentions supplemental funds but there is no language regarding those funds and how they would be distributed.

SBA Response: SBA accepts this comment and revises the paragraph to add the following language, “If supplemental funds are available for distribution, SBA will publish a notice of funding opportunity in consultation with the Recognized Organization.”

c. SBA received two comments regarding new paragraph (b) asking if SBA will amend a cooperative agreement with one SBDC decreasing its award in order to increase another SBDC’s cooperative agreement award to authorize unanticipated out-of-state travel?

SBA Response: SBA accepts this comment and adds the following language at the beginning of paragraph (b)(1), “In consultation with the Recognized Organization . . .”

Comments Opposed to § 130.630—Dispute Resolution Procedures

SBA received three comments regarding revised paragraph (a)(1). The comments question why the District Office needs to be involved in the process of a financial dispute resolution since the District Office is not involved in the financial oversight process.

SBA Response: SBA accepts this comment and replaces the District Office reference with the Grants Management Officer.

Comments Opposed to § 130.700—Suspension, Termination, and Non-Renewal

a. SBA received two comments regarding paragraph (a)(1) stating that this paragraph vests broad authority to terminate and contradicts guidance in the renewal application section and that this is concerning as it gives the Agency authority to terminate without cause.

SBA Response: SBA accepts these comments and is removing this paragraph. Further, the SBA acknowledges that the causes for termination are outlined in 2 CFR 200.340.

b. SBA received three comments regarding revised paragraph (b) stating that this paragraph does not accurately reflect the accreditation process. The recommendations are for continuous improvement of the program and are at the discretion of the Lead Center to act upon.

SBA Response: SBA accepts the comments and is replacing the word “recommendations” with the word “conditions.”

Comments Opposed to § 130.800—Oversight of the SBDC Program

SBA received one comment regarding new paragraph (c) regarding a change in the SBA primary contact and notification of the recipient organization. The commenter is questioning why this included in the regulations and if it is final.

SBA Response: SBA rejects this comment and believes that it is necessary to keep this paragraph for notification purposes.

Comments Opposing § 130.810—SBA Review Authority

SBA received one comment regarding paragraph (a), Site visits. The commenter states that this paragraph is repeating what is already stated in 2 CFR part 200.

SBA Response: SBA is rejecting this comment. SBA believes that more information is needed to provide to the recipient organization regarding site visits. Additionally, section 21 (k)(2) of the Small Business Act states that the Administration will develop and implement a biennial programmatic and financial examination of each small business development center established pursuant to this section.

Comments Opposed to § 130.820—Records and Recordkeeping

SBA received four comments stating that annual physical site visits are not necessary to conduct required subrecipient monitoring. Lead centers should be allowed flexibility in determining whether a physical or virtual visit will meet the needs of its required subrecipient monitoring. In cases where there have been no changes in leadership at the subrecipient and no problems exist, a virtual visit may suffice. Further, the comments state that this appears to unnecessarily restrict the method (in-person vs virtual) by which centers are reviewed and it is in contradiction to any risk-based approach that a Lead Center may deploy.

SBA Response: SBA accepts the comments. However, SBA revised paragraph (a)(2)(ii) to include: (1) that a physical on-site visit must be conducted at least once every four years by the recipient organization; (2) or when SBA deems it necessary, such as, when there is a change in leadership, either at the Service Center or the Lead Center, or the SBA has or receives concerns regarding a Service Center.

Comments Opposed to § 130.825—Reports

a. SBA received two comments on new paragraph (b)(3) requesting that

SBA provide a timeline for delivering final reports in the regulations rather than referring to the NOFO.

SBA Response: SBA rejects this comment as the dates and times may change. Additionally, the Agency should have the flexibility to do this in the NOFO.

b. SBA received two comments regarding newly revised paragraph (d) stating that including specific reporting formats in the regulations limits ongoing improvements to narrative reporting and that simplified reporting may make the content more useful for the Agency.

SBA Response: SBA accepts the comments and revises paragraph (b) to add an introductory sentence which states, “Performance reports must include the data specified below, along with any other information the SBDC feels may be relevant to a full appraisal of its performance.”

c. SBA received one comment on newly revised paragraph (e) stating that this paragraph does not vest any new authority within the Agency nor does it further the Agency’s stated goal of providing more specific and clear instructions. The Uniform Guidance provides for a certification statement to be included. This is redundant to existing guidance provided by the Uniform Guidance.

SBA Response: SBA accepts that comments and deleted this paragraph.

Comments Opposed to § 130.830—Audits and Investigations

SBA received one comment stating that this section does not vest any new authority within the Agency nor does it further the Agency’s stated goal of providing more specific and clear instructions.

SBA Response: SBA accepts this comment and revises this section to reference 2 CFR part 200.

g. Section-By-Section Analysis Section 130.100—Introduction

SBA proposed to add a paragraph providing a broad overview of the Program and purpose. SBA believes that this will provide clarity. SBA did not receive any comments on this section and is moving forward with the paragraph as proposed.

Section 130.110—Definitions

This section proposed adding 23 new definitions to clarify and codify current District Office responsibilities, State/Lead Center Director responsibilities, and define other terms already in use in the notice of funding opportunity. If the revised or new definition is not listed below, SBA did not receive any

comments for them and moves forward with those definitions as proposed.

a. Due to the comments received, SBA revised the definition of accreditation process that reflects the commenters suggestions and current use of the term. The new definition states that it's the process by which evaluation and assessment occurs to assist an SBDC with assessing its processes and outlining areas needing improvement by providing recommendations to strengthen delivery of services and assistance.

b. Due to comments received, SBA revised the definition of application to include the term "renewal application."

c. After reviewing the comments, SBA will not change the definition of cash match. As defined in 2 CFR part 200, waived indirect cost is the difference between the total amount of indirect costs charged to a Federal award and the total amount of indirect costs that could have been charged to a Federal award. The regulation at 2 CFR part 200 refers to this as unrecovered indirect costs.

d. SBA took the comments under consideration and revised the definition of clearinghouse to define the term more clearly and accurately as requested by the commenters. The definition now states that the clearinghouse is a source of market and industry information made available to all SBDC networks to assist clients and supports the exchange of information between SBDCs.

e. SBA took the comments submitted under consideration and revised the definition of client to include the word "nascent" before the word "entrepreneur."

f. SBA accepts the comments submitted and refers the reader to the definition of program income as defined in 2 CFR part 200.

g. After some consideration, SBA agrees with the commenters and revised the definition of SBDC Director to state that at least 75 percent of the individual's time and effort is allocated to the SBDC grant.

h. SBA agrees with the comments submitted and deleted the words "hiring outside consultants for a client" from the definition.

Section 130.200—Eligible Entities

As required in the Small Business Act, 15 U.S.C. 656 and 648(a)(1), this section adds a Women's Business Center operating pursuant to section 29 of the Small Business Act as an entity eligible to apply to be a Lead Center SBDC. This section also proposed to add eligibility criteria for the Commonwealth of the Northern Mariana Islands. SBA is unable to change this requirement, as the Small Business Act, 15 U.S.C. 656

and 648(a)(1) states, in part, that after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education or a women's business center operating pursuant to section 656 of the title as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The previous sentence shall not apply to an applicant that has its principal office located in the Commonwealth of the Northern Mariana Islands.

Section 130.300—Small Business Development Centers (SBDCs)

This section codifies the statutory authority for the Administrator to operate and administer the SBDC Program through cooperative agreements issued to recipient organizations, as established under the Small Business Act. SBA did not receive any comments on this section and is moving forward with the rule as proposed.

Section 130.310—Area of Service

This section requires service centers to be primarily housed within institutions of higher education or a Women's Business Center operating pursuant to section 29 of the Small Business Act, under paragraph (c). SBA is revising the paragraph to provide that for any applicant commencing after January 1, 1992, the recipient organization must ensure that any new SBDC service centers established within its area of service, to the extent practicable, are primarily housed within institutions of higher education or a WBC, operating pursuant to section 29 of the Small Business Act (15 U.S.C. 656) as stated in section 21(a)(1) of the Small Business Act (15 U.S.C. 648(a)(1)).

Section 130.320—Operating Requirements

This section adds five requirements already in use in the notice of funding opportunity as paragraphs (d) through (g) of the section to standardize SBDC naming/branding nationwide and enhance the current conflict of interest policy as follows:

- The name of the Lead SBDC must contain the official identification of "Small Business Development Center" and that, unless waived by the AA/SBDC, the SBDC has one year from the date of promulgation to make any necessary changes.
- Any entity operating as an SBDC service center, whether receiving Federal funding or not, is now considered a part of the recipient

organization's network and is required to report its goals, achievements, etc. as any other service center.

- The process to obtain the minimum number of required staff members for international trade assistance as required by the Act.

- The requirement for every SBDC to annually sign the conflict-of-interest form and to have a policy, which addresses how the recipient organization will deal with competing and conflicting issues.

a. SBA accepts a comment and revises the paragraph (a) to delete the reference to "full-time."

b. SBA accepts the comments regarding new paragraph (e) stating that this is new and revises the paragraph to narrow the scope of the requirement to read as follows: "Any entity that is using the term 'Small Business Development Center' and under contract with the Lead Center and receiving program funds, whether . . ." and at the end of the paragraph will replace the word "entity" with the words "Service Center."

c. SBA deleted paragraph (f) since the new accreditation standards no longer address the technology designation.

Section 130.330—SBDC Services and Restrictions on Services

SBA provides an overview of the services that an SBDC must provide to prospective entrepreneurs and existing small businesses and the related reporting requirements. Further,

SBA requires the SBDC network to collaborate with other state and local government programs providing assistance to small businesses and potential small business. This change will provide clarity and transparency to the regulations and is consistent with the notice of funding opportunity.

a. SBA accepts the comments and revised paragraph (a) to include, "to the extent practicable."

b. SBA agrees with the comment received and deleted § 130.330(b)(4). The remaining paragraphs are redesignated from paragraphs (b)(5) and (6) to paragraphs (b)(4) and (5) in this final rule.

c. SBA addresses a comment on newly revised § 130.330(b)(3) and agrees that an SBDC counselor should not act as an agent for the client. SBA inserted after "however" "SBDCs may not attest to a client's readiness or creditworthiness to the lending institution either verbally or in writing". Further SBA deleted "neither SBDC staff nor their agents may take a direct or indirect role in representing clients in loan negotiations."

d. SBA revised the language in § 130.330(b)(5) (now § 130.330(b)(4)) to state “SBDCs may participate on boards and panels of financial institutions and with outside organizations but may not be involved in any final credit decisions involving SBDC clients or in making or servicing loans.”

e. SBA revises the language in § 130.330(b)(6) (now § 133.330(b)(5)) to include “. . . but may not advocate for, promote, recommend approval. . .” to the paragraph.

f. SBA revises § 130.340(c) to not include specific focus areas in the regulations as they could change and revised the language in the regulation to reflect this change. The focus areas will be included in the NOFO each year.

Section 130.340—Specific Program Responsibilities

This section clarifies the responsibilities of the AA/SBDC and the SBDC Lead Center Director (Lead Center Director). Currently, this section refers to SBA as the entity making decisions or determinations. The final rule distinguishes between AA/SBDC and the District Director to provide for more transparent identification of roles and responsibilities for the public. SBA revises the language in new § 130.340(c)(5) to state that service centers should provide access to training.

Section 130.350—SBDC Advisory Boards

This section would replace the words “shall” and “may” with “must” and “will” and imposes term limits and language to provide guidance to the boards, consistent with the cooperative agreement.

a. After reviewing comments submitted from the public, SBA will no longer revise § 130.350(a)(3).

b. SBA revised § 130.350(a)(6) stating that the Board members can pay for their own costs if they choose to do so.

Section 130.360—Selection of the SBDC Lead Center Director

This section codifies the current selection process, for SBDC Lead Center Director utilized by SBDCs. SBA did not receive any comments on this section and is moving forward with the rule as proposed.

Section 130.370—Contracts With Other Federal Agencies

This section codifies the requirements process for an SBDC to enter a contract with another Federal agency and adds language to the end of the paragraph with a five-business day response timeframe for SBA.

Section 130.380—Client Privacy

Section 21(a)(7) of the Act requires SBDCs and the Administration to protect the privacy of any individual or small business receiving assistance in the Program. Under this final rule, an SBDC, including its contractors and other agents, would not be permitted to disclose to an entity outside the individual SBDC, the name, address, email 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, unless such disclosure meets on the three exceptions discussed below.

The three exceptions, as authorized by the Act, would permit disclosure if: (1) A court orders the Administrator to disclose the information in any civil or criminal enforcement action initiated by a Federal or state agency; or (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 § 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; or (3) SBA requires client contact data to directly survey SBDC clients.

This rule would require SBDCs to provide an opportunity for clients to opt in to allow SBA to obtain their contact data. SBA’s use of client contact data would be restricted only to conduct survey and studies that help stakeholders better understand how the services the client received affect their business outcomes over time. These surveys or studies would include, but are not limited to, program evaluation and performance management studies.

Under this final rule, the Agency would not allow use of client contact data for any other purpose beyond program surveys or studies.

This final rule prohibits 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. Other Federal or state agencies making such disclosure requests are required to submit formal requests, in writing, 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.

This final rule codifies the current privacy protections in place in the Program employed by the Agency. Any reports on the Program produced by an SBDC, including its contractors and other agents, and the Agency, could not disclose individual client information without consent from the client. Any such reports could only report activity data in the aggregate, unless given consent, to protect the individual privacy of clients.

SBA believes that the language in the regulation does not compromise the intent of the privacy guidelines currently in place. The language states that the 641 has an opt-in clause for clients. Clients do not have to provide their information on the form.

Section 130.400—Application Procedure

Currently, this section is not used. This section requires all SBDC applicants to comply with the current annual notice of funding opportunity procedures for their new or renewal applications to receive consideration. This final rule reinforces that an SBDC applicant must follow procedures for submitting a new or renewal application, and to clarify the application procedures. SBA did not receive any comments on this section and is moving forward with the rule as proposed.

Section 130.410—New Applications

Currently, this section outlines outdated procedures that are no longer enforced. This final rule codifies the current new application procedures utilized by SBDCs, which require applicants to be located in the same state/region where the SBDC is located. This section also codifies new recruitment and selection procedures for new recipient organizations. As a result of submitted comments, SBA will remove the word “region” from the § 130.410(b).

Section 130.420—Renewal Applications

Currently, this section outlines outdated procedures that are no longer enforced. This final rule revises the existing renewal and nonrenewal process to reflect the process currently utilized by SBDCs. Factors of consideration in the renewal application under paragraph (c) are expanded to include corrective measures implemented as a result of examinations conducted; and the accreditation provision of § 130.810(c), including any conditions from the accreditation report, and corrective measures implemented, affecting the recipient organization and the SBDC network.

SBA added language to § 130.420(c)(2) which incorporates client satisfaction rates as a deciding factor.

Additionally, SBA revised § 130.420(c)(5) citing the current accreditation report, rather than recommendations.

Section 130.430—Application Decisions

This final rule clarifies and makes transparent the existing approval process of an application by outlining the options to grant approval, conditional approval, or denial of an application. SBA did not receive any comments on this section and is moving forward with the rule as proposed.

Section 130.440—Maximum Grant

This final rule codifies the limitations on grant funding set forth in section 21(a)(6)(C) of the Act and the exceptions set forth under paragraph (b). The legislative language was revised in this codification to be clear and transparent. SBA did not receive any comments on this section and is moving forward with the rule as proposed.

Section 130.450—Matching Funds

This final rule expands and clarifies the requirements on matching funds for cash, in-kind, or authorized indirect funds so that it is clearer and more transparent.

As a result of comments received, SBA revised the language § 130.450(a) to state that cash match must be equal to or greater than 50 percent of the SBA funds used by the SBDC.

Further, because of comments received, SBA revises § 130.450(b) by adding that only the additional requirements from SBA will need to be identified.

Under this final rule, paragraph (c) is added to clarify matching requirements for insular territories.

Paragraph (d) codifies the requirement for all applicants to submit a certification of cash match and program income, currently required by the notice of funding opportunity.

Paragraph (e) requires all matching funds, in addition to the Federal and program income funds, to be under the direct management of the SBDC State/Region Director. As a result of comments received, SBA adds the following sentence to § 130.450(e) for clarity: “If in-kind contributions are utilized by the SBDC, the State Director or an SBDC Service Center Director is then considered to be in control of those contributions.”

Paragraph (g) expands the list of unallowable sources of matching funds and as a result of comments received to the proposed rule, SBA revises the

language in § 130.450(g) to include language that defines overmatching expenditures as those that are derived from eligible matching sources; are reasonable, allowable, and allocable to the SBDC program; are over and above the minimum match required to the Federal expenditures; and are included on the required SBDC financial reporting to SBA for the project period.

Section 130.460—Budget Justification

This section codifies current budget justification procedures used by SBDCs, as required by the notice of funding opportunity. In accordance with 2 CFR part 200, the SBDC is required to have the prior approval from the Agency for the purchase of equipment, either through a specific disclosure in an annual cost proposal or through an approved amendment to an existing cooperative agreement.

This final rule outlines procedures for foreign travel requests. Specifically, all foreign travel requests are required to be submitted to the appropriate District Director and the Office of Small Business Development Centers (OSBDCs) Program Manager for review and then to the AA/SBDC for final approval.

Paragraph (i) is revised to allow dues to the recognized organization to be charged to the cooperative agreement.

As a result of comments received, SBA deleted proposed § 130.460(f).

As a result of the comments received on proposed § 130.460(g) (now § 130.460(f)) SBA revised the language by deleting the reference to the salary but keeping the rank in the organization. SBA received two comments on proposed § 130.460(i) (now § 130.460(h)) regarding travel stating that this entire section is covered by the omni-circular. However, SBA will keep this paragraph as stated in the proposed rule because it includes details and information not found in 2 CFR part 200.

As a result of comments received, SBA deleted proposed § 130.460(i)(2). Proposed paragraph (i) was redesignated as paragraph (h) in this rule, so proposed paragraphs (i)(3) through (5) are redesignated as paragraphs (h)(2) through (4).

As a result of comments received, SBA deleted proposed § 130.460(j).

Section 130.465—Restricted and Prohibited Costs

Under this final rule, this new section prohibits the use of Federal funds, matching funds and program income as required under the cooperative agreement for the purposes identified as unallowable in applicable sections of 2

CFR part 200. Currently regulations do not restrict the use of these above cited funds. These changes, in accordance with 2 CFR part 200, ensure that program funds are not used by recipient organizations for the purpose of sub-grants, or as seed money for venture capital, or for other purposes outside the scope of authorized SBDC activities. SBA did not receive any comments on this section and is moving forward with the rule as proposed.

Section 130.470—Fees

This section prohibits SBDC network entities, staff, consultants, or volunteers to solicit or accept fees or other compensation for counseling services, including, but not limited to, business or marketing plan development, loan packaging or credit application assistance, or other advisory services described in the Act. SBA adds a second paragraph to codify, clarify and make more transparent the intent of the section. SBA did not receive any comments on this section and is moving forward with the rule as proposed.

Section 130.480—Program Income

This section codifies the existing requirement that SBDCs may not report program income as a matching resource. Additionally, unused program income is permitted to be carried over to the subsequent budget period by the SBDC network; however, the aggregate amount of network program income cannot exceed 25 percent of the total SBDC budget (Federal and matching expenditures). The intent of the section remains the same; however, it is revised to make it clearer and more transparent.

Based upon comments received, SBA will not revise or change paragraph (b) regarding the use of program income based on the Small Business Act section 21(a)(4)(A) which requires the recipient to match 100 percent Federal grant funding not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions. SBA interprets this paragraph to mean that program income, which are fees collected from recipients of assistance, is excluded to be used as matching funds. Further, SBA requests the sources of match to ensure that the NFE's cost sharing and matching are not paid by the Federal Government under another Federal award or by other Federal sources. Additionally, forms submitted to the SBA require the NFE to provide the source of the matching funds. If the funding sources are not provided to the SBA, SBA could unknowingly approve an award with unallowable sources of matching funds. However, SBA deleted new paragraph

(e) regarding program income and SBDC sponsored activities based upon comments received.

Section 130.490—Property Standard

The proposed rule created a new section to require the SBDCs to adopt and implement the respective Office of Management and Budget (OMB) guidelines for property standards. SBA received one comment opposing this section as it repeats guidelines outlined in 2 CFR part 200. Based upon the comment received, SBA deleted this section from the final rule.

Section 130.500—Advances and Reimbursements.

Current regulations outline the process for SBDC submission of reimbursement requests and advancements. Based upon comments received, SBA will delete this section.

Section 130.600—Cooperative Agreement

Currently, this section is not used. This section codifies program requirements currently enforced through the notice of funding opportunity and followed by the SBDCs. Under this final rule, paragraph (a) requires a recipient organization to incorporate the cooperative agreement into its SBDC sub-agreements and contracts, which is already being done by the SBDCs.

As a result of comments, paragraph (b) now states that SBA reserves the right to disapprove any sub-agreement entered into the by recipient organization with SBDC service center organizations, vendors, or contractors.

Paragraph (c) outlines procedures for developing performance goals and measurements, negotiating the goals and measurements, and consequences of not meeting those goals and measurements. Also, SBA loan goals are not negotiated or incorporated into the cooperative agreement without the written approval of the AA/SBDC.

As a result of comments submitted, paragraph (d) is deleted.

Section 130.610—Grant Administration and Cost Principles

As a result of comments received, SBA will delete both the last sentence in the current paragraph and newly designated paragraphs (b) and (c).

Section 130.620—Revisions and Amendment to Cooperative Agreements

This section revises paragraph (a) by outlining required prior approval requests by SBDCs for revisions to the cooperative agreement. However, due to comments received, SBA will delete

paragraph (a)(2). Additionally, due to comments received, SBA revised paragraph (a)(3) to add the following language, “If supplemental funds are available for distribution, SBA will publish a notice of funding opportunity in consultation with the Recognized Organization.”

SBA will also add new paragraph (b) for clarity and transparency. As is current practice, paragraph (b) would authorize the AA/SBDC to amend one or more cooperative agreements to authorize unanticipated out-of-state travel by SBDC personnel responding to a need for services in a Presidentially Declared Major Disaster Area and to address how travel costs are to be handled. Paragraph (b) authorizes SBA to provide financial assistance to SBDCs, 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 or SBA Administrator has declared a major disaster.

Due to comments received, SBA added the following language at the beginning of paragraph (b)(1), “In consultation with the Recognized Organization . . .”

Section 130.630—Dispute Resolution Procedures

This section clarifies the existing procedures for a financial dispute or a programmatic or nonfinancial dispute for clarity and transparency. The intent of this section remains the same. As a result of comments received, SBA replaces the District Office reference with the Grants Management Officer.

Section 130.700—Suspension, Termination, and Non-Renewal

This section revises and clarifies the procedures for suspension, termination or non-renewal for clarity and transparency.

Proposed paragraph (a)(1) is deleted in this final rule due to comments received and SBA acknowledges that the causes for termination are outlined in 2 CFR 200.340. Proposed paragraph (a)(2) (now paragraph (a)(1)) allows the recipient organization to continue to conduct project activities and incur allowable expenses until the end of the current budget period in instances when the SBA has elected to not to renew a cooperative agreement. Under this final rule, if a recipient organization does not seek to renew the grant, it must notify the District Office and send a letter of intent to withdraw to the AA/SBDC.

Paragraph (a)(2) of this final rule (proposed paragraph (a)(3)) adds the sentence, “A decision to suspend a

cooperative agreement is effective immediately.” Additionally, the notice of suspension recommends that the recipient organization cease work on the project immediately and places SBA under no obligation to reimburse any expenses incurred by a recipient organization while it is under suspension.

Under this final rule, paragraphs (b)(11) through (15) would be added for clarity and transparency on the causes for termination or suspension.

Currently, the administrative procedures for suspension, termination, and non-renewal are found in the cooperative agreement. Under this final rule, the new administrative procedures are outlined under paragraph (c) as well as the responsibilities of the AA/SBDC in these circumstances.

Under this final rule, paragraph (d) is added to outline the administrative review of suspension, termination, and non-renewal actions as well as the required process for SBDCs to submit the request for administrative review. Further, due to comments received on the proposed rule, SBA is revising paragraph (d) by replacing the word “recommendations” with the word “conditions.”

Section 130.800—Oversight of the SBDC Program

This section is revised to clarify the existing broad language used to outline program oversight requirements by adding three new paragraphs. SBA received one comment concerning new paragraph (c) regarding a change in the SBA primary contact and notification of the recipient organization. The commenter is questioning why this included in the regulations and if it is final. SBA is not changing this paragraph and believes that it is necessary to keep this paragraph for notification purposes.

Section 130.810—SBA Review Authority

This final rule revises paragraph (c) to reiterate 15 U.S.C. 648(k)(2) of the Small Business Act and to state that SBA may not renew or extend any cooperative agreement with an SBDC unless the center has been approved under the accreditation program, except that the AA/SBDC may waive such accreditation requirement, at their discretion, upon showing that the center is making a good faith effort to obtain accreditation. This section clarifies and provides more detail on the review authority provided to SBA regarding the SBDC Program. SBA received one comment regarding paragraph (a) (Site visits). However, SBA is keeping the paragraph in this

final rule as the SBA believes that more information is needed to provide to the recipient organization regarding site visits. Section 21(k)(2) of the Small Business Act states that the Administration will develop and implement a biennial programmatic and financial examination of each small business development center established pursuant to this section.

Section 130.820—Records and Recordkeeping

This final rule revises the existing broad instructions on records and recordkeeping requirements for an SBDC to provide clarity and transparency. The revisions include more narrow instructions to clarify each required step in the current process.

SBA received four comments stating that annual physical site visits are not necessary to conduct required subrecipient monitoring. Lead centers should be allowed flexibility in determining whether a physical or virtual visit will meet the needs of its required subrecipient monitoring. In cases where there have been no changes in leadership at the subrecipient and no problems exist, a virtual visit may suffice. Further, the comments state that this appears to unnecessarily restrict the method (in-person vs virtual) by which centers are reviewed and it is in contradiction to any risk-based approach that a Lead Center may deploy.

SBA Response: SBA accepts these comments and revises the paragraph to state that the Lead Center must annually conduct monitoring of its Service Centers either in-person or virtually. Moreover, a physical on-site visit must be conducted at least once every four years by the recipient organization; or when SBA deems it necessary, such as, when there is a change in leadership, either at the Service Center or the Lead Center, or the SBA has or receives concerns regarding a Service Center.

Section 130.825—Reports

This final rule requires SBDCs to submit performance and financial reports to SBA for review, as currently required by the notice of funding opportunity. The proposed revisions outline the frequency of the reporting, electronic data reporting which includes counseling and training records, and specific details for each of the performance reports and financial reports. SBA is not changing paragraph (b)(3) as the dates and times may change and the Agency should have the flexibility to do put the dates and times in the NOFO.

Due to comments received on the proposed rule, SBA revises paragraph (d) in this final rule to add an introductory sentence which states, “Performance reports must include the data specified below, along with any other information the SBDC feels may be relevant to a full appraisal of its performance.”

Further, SBA deletes paragraph (e) due to comments received on the proposed rule.

Section 130.830—Audits and Investigations

Current regulations provide general but outdated, compliance instructions to the SBDCs regarding audits and investigations performed by SBA’s Office of Inspector General. This section would be updated and revised with more specific and clear instructions. However, due to comments received on this proposed section, SBA refers to 2 CFR part 200.

Section 130.840—Closeout Procedures

Current regulations do not include closeout procedures; rather, these are found in the cooperative agreement. Under this final rule, this new section outlines closeout procedures for the recipient organization to ensure that program funds and property acquired or developed under the SBDC cooperative agreement are fully reconciled and transferred seamlessly between recipient organizations, service centers, or other Federal programs. SBA did not receive any comments on this section and is moving forward with the rule as proposed.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35), the Congressional Review Act (5 U.S.C. 801–808), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is a “significant” regulatory action for the purposes of Executive Order (E.O.) 12866. Accordingly, the next section contains SBA’s Regulatory Impact Analysis.

Regulatory Impact Analysis

1. Is there a need for this regulatory action?

The SBDC rules were last revised in 1995 (*see* 60 FR 31504) (June 13, 1995). However, the statute authorizing the SBDC Program has been amended numerous times since the last rulemaking (for a full listing of amending legislation, see the history

notes at 15 U.S.C. 648). For example, SBA updates the regulation as required by section 21(a)(7) of the Small Business Act to protect the privacy of any individual or small business receiving assistance in the Program.

SBA believes it is now necessary to revise the regulations to outline current policies and procedures for the SBDC Program for consistency. This regulation also incorporates the changes required by the 2 CFR part 200 and other grant changes that have taken place over the last 25 years. Additionally, the America’s Small Business Development Centers (ASBDC), the recognized association as established in section 21(a)(3)(A), has requested changes that are consistent with the revisions made in the notice of funding opportunity and cooperative agreement. Furthermore, the SBA received 133 comments to the ANPRM that was published on April 2, 2015, some of which are incorporated in this rule.

In the absence of this rule, there are discrepancies between the regulations and Program governing documents, including the notice of funding opportunity and the cooperative agreement. Currently, SBA and the SBDCs reference three or more documents to find guidance on the Program, and the annual notice of funding opportunity and cooperative agreement have become, for all practical purposes, documents which interpret the statute. Also, SBA has limited authority to hold SBDCs accountable for low or non-performance. While low or non-performance is a rare occurrence, SBA’s only current recourse is to write conditions into the SBDC notice of award. The rule strengthens SBA’s oversight and accountability, as intended by Congress, and reduces burden by consolidating programmatic guidance to one document.

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

The benefits of this rule are based on incorporating all the changes that have been made with the publication of 2 CFR part 200, other grant changes over the past 20 years, and a streamlining of both the notice of funding opportunity and the cooperative agreement. Specifically, the rule provides guidance on:

- The determination of the official name of the SBDC.
- Directing minimum reporting for, and hiring of, State Directors.
- Applying for other grants/other sources of funds.
- Clarifying Project Officer responsibilities.

- Clarifying matching funds, such as in-kind funds, funding expenditures, and eligible entities budget justification.
- The collection and use of individual SBDC client data.
- Adding new sections regarding suspension, termination, and non-renewal, payments and reimbursements,

property standards, confidential information—among others. The new regulations will simplify and streamline notice of funding opportunity language to contain only that information that the applicant organization must submit and not all the other information that will now be

written into the regulations. Moreover, having the regulations in one document would make administering the Program by the SBDCs much easier by not having to reference three or more different documents. The estimated reduction in burden hours to this consolidation is presented in the table below:

TABLE 1—ESTIMATE OF SAVINGS TO SBDCS

Outcomes	Number of expected occurrence per year (A)	Average time or money saved per occurrence (B)	Total annual savings (A × B)
Provision of better information leading to better choices	63 SBDCs	4 hours at \$120.22 1/hr = \$480.88.	252 hours; \$30,295.44.
Increased efficiency from clarity and agreement with other related documents.	63 SBDCs	2 hours at \$120.22 1/hr = \$240.44.	126 hours; \$15,147.72.
Total Savings .....	.....	.....	378 hours; \$45,443.16.

¹ Based on the most recently available data, from 2019 Salary Survey of America's SBDC, hourly wage of a State Director (\$60.11) plus 100% for benefits. Salary Survey (americassbdc.org), p. 3.

There are currently 63 SBDCs that benefit from this new regulation. We estimate the changes to the rule will create a four-hour benefit per SBDC from better information leading to better SBDC choices because the revisions will clarify definitions and provide guidance on various issues. We estimate a two-hour increase in efficiency per SBDC due to the clarity that the revisions to the rule will provide because the rule will align with the notice of funding opportunity and the cooperative agreement. Using the average hourly wage of an SBDC State Director, the total annual benefit of these revisions comes to \$45,443.16 for all the 63 SBDCs. We anticipate that these benefits will be realized over perpetuity in that SBDCs will continue to experience better decision-making from the clarification and additional guidance

provided and increased efficiency from only having to reference one document. There are also several benefits that cannot be quantified. One of these benefits is the increased security that the rule provides SBDCs through its requirements to protect the privacy of an individual or small business receiving assistance in the Program. Another benefit to revising and updating the regulations is that it would give SBA more authority to enforce the requirements as written in the regulations which is something currently lacking in the Program. There are some costs incurred by the SBDCs in initially reading and interpreting the new regulation. There is an additional requirement for application procedures which currently only exists in the notice of funding opportunity. We estimate that this will

add approximately two hours of burden for SBDCs. The SBDCs also must provide a certification of cash match and program income for which a requirement currently exists only in the notice of funding opportunity. Additionally, the rule would require SBDCs to submit performance and financial reports to SBA for review, as currently required by the notice of funding opportunity. These requirements are reflected in the most recent Information Collection Requests for the reporting requirements for SBDCs, so while reflected here, these requirements do not change the Paperwork Reduction Act cost burden. SBA staff must review these reporting requirements which we estimate will take SBA staff 30 minutes twice a year to review. These costs are summarized below:

TABLE 2—ESTIMATE OF COSTS TO SBDCS/SBA

	Amount of time required hours (A)	Value of time (B)	Frequency per year (C)	Number of businesses or individuals affected (D)	Total annual cost (A × B × C × D)
Read and interpret the regulation	2	\$120.22 1/hr	1	63 SBDCs	126 hours; \$15,147.72.
Reporting	2	\$58.90 ² /hr	2	63 SBDCs	252 hours; \$14,842.80.
Reviewing Reports (SBA)	0.5	\$137.10 ³ /hr	2	For 63 SBDCs	63 hours; \$8,637.30.
Total Administrative Costs .....	.....	.....	.....	.....	441 hours; \$38,627.82.

² Based on the most recently available data, from 2019 Salary Survey of America's SBDC, hourly wage of an Accounting, Grants, and Finance Position of (\$29.45) plus 100 percent for benefits. Salary Survey (americassbdc.org), p. 12.

³ Based on the 2022 salary of a GS-14 step 5 analyst in the DC area plus 100 percent for benefits. SALARY TABLE 2022-DCB (opm.gov).

The undiscounted schedule of benefits and costs over the first three years of the rule (with the values in year

three to continue in perpetuity) are presented in the following table:

TABLE 3—SCHEDULE OF COSTS/(SAVINGS) OVER 3-YEAR HORIZON

	Benefits	Costs
Year 1	378 hours; \$45,443.16	441 hours; \$38,627.82.
Year 2	378 hours; \$45,443.16	310 hours; \$23,107.
Year 3	378 hours; \$45,443.16	310 hours; \$23,107.

The annualized net savings of this rule is \$20,640 with a seven percent discount rate, assuming annual savings of \$44,722 in perpetuity and costs in the first year of \$38,015 and afterwards costs of \$23,107, in perpetuity.

3. What alternatives have been considered?

SBA considered two alternatives to this rulemaking. First would be using internal SBA guidance, such as Standard Operating Procedures (SOPs), to interpret existing rules. SBA also considered continued interpretation of program requirements through the cooperative agreement negotiation process. However, under the applicable statute, SBA must consult with the ASBDC when developing documents as set forth in the statute (15 U.S.C. 648(a)(3)(A)).

In addition to this consolidation requirement, SBA values the input of the public. The rulemaking process would provide an opportunity for both the ASBDC and the public to comment on changes made to the Program. SBA also identified a need to streamline changes made to the notice of funding opportunity and cooperative agreement, and any changes in Federal grant procedures, since the Program regulations were last revised. Since this rule is an all-encompassing revision of the current regulations, SBA does not believe that more extreme changes could be made at this time. Also, this statute specifically includes a direction for SBA to develop regulations for the SBDC Program with the ASBDC and SBDCs. For these reasons, SBA believes that proceeding with a rulemaking is the best approach to revise SBDC Program requirements currently.

Summary

The changes proposed for this rule will not negatively affect access to the Program for small businesses or nascent entrepreneurs. Each small business and nascent entrepreneur will continue to have access to the full array of services provided by the SBDCs. In fact, there will be a de minimis cost savings realized by SBDCs because they will not

have to reference multiple documents for guidance. There are also some non-quantifiable benefits such as increased privacy and the ability for SBA to enforce the requirements laid out in the rule.

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It is anticipated that this rule will not be a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) will send the rule and the “Submission of Federal Rules Under the Congressional Review Act” form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

Seven recipients (States) are grantees of SBDC Programs hosted by State economic development organizations. They are Colorado, Illinois, Indiana, Minnesota, Montana, Ohio, and West Virginia. All other grantees are hosted by institutions of higher education. This rule imposes no additional or special burdens on the State-based SBDCs. As mentioned above the grantees are currently abiding by these regulations and 2 CFR part 200 as the requirements are already in the notice of funding opportunity and cooperative agreement. The recipient organizations apply or volunteer to participate in the Program and can withdraw at any time.

SBA determined that this rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment. However, SBA invites comments on issues relating to the federalism aspects of this rule.

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

SBA determined that this rule would not impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act (PRA). Currently, there are two PRA submissions associated specifically with the SBDC Program: (1) OMB control number 3245–0140 Cooperative Agreement; and (2) OMB control number 3245–0169, Federal Cash Transaction Report, Financial Status Report, Program Income Report, and Narrative Program Report. These will not change, and no new requirements are required in the rule.

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

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the Agency to prepare an

Initial Regulatory Flexibility Analysis (IRFA) describing the economic impact that the rulemaking may have on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The rule revises regulations to outline current policies and procedures for the SBDC Program. Specifically, the rule clarifies and defines the role of the District Office regarding cooperative agreement oversight activities by adding definitions and procedures throughout the regulations. Second, SBA adds 23 definitions that refine and explain various roles, procedures, documents,

and categories of funding and revises other definitions for clarification. Third, a section is added to codify SBDC client confidentiality. Finally, the current process of hiring a State/Region Director is outlined in an SBA policy notice; however, the regulation codifies and refines this process. Most of these changes are already implemented by the SBDCs, and these regulations are codifying them.

The rule impacts 62 SBDCs that primarily fall into the North American Industry Classification System (NAICS) codes 611210 (junior colleges) and 611310 (colleges, universities, and professional schools). In addition, seven SBDCs are hosted by state economic development organizations, such as

state Departments of Trade or Commerce.

A junior college is considered small if its annual receipts are \$28.5 million⁴ or less while colleges, universities, and professional schools are considered small if annual receipts are \$30.5 million or less. As shown in Table 2, only one SBDC can be considered small under both size standards. Note that these size standards do not apply to the seven SBDCs hosted by state organizations. However, state organizations under NAICS 92 (public administration) do not have applicable small business size standards but would not be considered small using the standards of NAICS codes 611210 or 611310.

TABLE 5—SBDC SIZE STANDARD BY NAICS CODE

NAICS code	SBA Small business size standard: annual Receipts threshold	Count
Junior Colleges (611210)	Less than or equal to \$28.5 million	1
	Greater than \$28.5 million	7
Colleges, Universities, and Professional Schools (611310)	Less than or equal to \$30.5 million	0
	Greater than \$30.5 million	47
Public Administration (92)	No standard established	7
Total .....	.....	62

The purpose of the rule is to codify existing practices and to provide consistency between regulations and the Program’s governing documents and practices. The Regulatory Impact Analysis presented earlier describes the costs and savings of the rule and the small net savings relative to the number of entities. Accordingly, the Administrator of the SBA, hereby certifies to the Chief Counsel of Advocacy of SBA that this rule will not have a significant economic impact on a substantial number of small entities. SBA invites comment from the public on this certification.

RISE Act (Research Investment To Spark the Economy Act of 2021, H.R. 7308)

The Administrator may authorize an SBDC to provide advice, information, and assistance, as described in subsection (c) of the Small Business Act, to a small business concern located outside of the state, without regard to geographic proximity to the small business development center, if the small business concern is located in an area for which the President has declared a major disaster.

The Administrator may provide financial assistance to an SBDC, a Women’s Business Center described in section 29 of the Small Business Act,

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.

List of Subjects in 13 CFR Part 130

Grant programs-business, Small businesses, Technical assistance.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 130 as follows:

PART 130—SMALL BUSINESS DEVELOPMENT CENTERS

- 1. The authority citation for part 130 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 648, and 648 note.

- 2. Revise § 130.100 to read as follows:

§ 130.100 Introduction.

(a) *Objective.* The Small Business Development Centers (SBDC) Program creates a broad-based system of assistance for the small business community by linking the resources of Federal, state, tribal, and local governments with the resources of the educational community and the private sector. The Program provides small

businesses and aspiring entrepreneurs with a wide array of technical assistance and support to strengthen performance and sustainability of existing small businesses, and to enable the creation of new business entities. The Small Business Administration (SBA or the Agency) articulates its responsibilities for the general management and oversight of the SBDC Program by means of a cooperative agreement with the recipient organization.

(b) *Adoption of amended references.* All references in this part to Standard Operating Procedures, SBA official policies and procedures, and award documents adopt all ensuing changes or amendments to such sources.

- 3. Amend § 130.110 by:
 - a. Adding the definition “Accreditation process” in alphabetical order;
 - b. Revising the definitions “Applicant organization” and “Application”;
 - c. Removing the definition “Area of Service” and adding the definition “Area of service” in its place;
 - d. Adding the definitions “Associate Administrator/Entrepreneurial Development (AA/ED)” and “Associate Administrator/Small Business Development Centers (AA/SBDC)” in alphabetical order;

⁴ SBA Table of Size Standards.

- e. Removing the definition “Cash Match” and adding the definition “Cash match” in its place;
- f. Adding the definitions “Clearinghouse” and “Client” in alphabetical order;
- g. Removing the definitions “Cognizant Agency” and “Cooperative Agreement” and adding the definitions “Cognizant agency” and “Cooperative agreement” in their places, respectively;
- h. Revising the definition of “Counseling”;
- i. Adding the definition “Counseling record” in alphabetical order;
- j. Revising the definitions “Direct costs” and “Dispute”;
- k. Adding the definition “District Office” in alphabetical order;
- l. Revising the definitions “Grants Management Specialist”, “In-kind contributions”, and “Indirect costs”;
- m. Adding the definitions “Insular areas” and “Key personnel” in alphabetical order;
- n. Revising the definitions “Lead Center” and “Lobbying”;
- o. Adding the definitions “Matching funds”, “Notice of funding opportunity”, “Notice of non-renewal”, “Notice of suspension”, “Notice of termination”, and “Office of Small Business Development Centers (OSBDC)” in alphabetical order;
- p. Removing the definition “Overmatched Amount” and adding the definition “Overmatched amount” in its place;
- q. Adding the definitions “Prior approval” and “Program funds” in alphabetical order;
- r. Revising the definition “Program income”;
- s. Removing the definition “Program manager” and adding “Program Manager” in its place;
- t. Adding the definition “Program performance data” in alphabetical order;
- u. Removing the definition “Project officer” and adding the definition “Project Officer” in its place;
- v. Revising the definition “Project period”;
- w. Adding the definition “Proposal” in alphabetical order;
- x. Revising the definition “Recipient organization”;
- y. Adding the definition “SBDC Lead Center Director” in alphabetical order;
- z. Revising the definition “SBDC network”;
- aa. Adding the definitions “SBDC satellite location”, “SBDC service center”, and “SBDC Service Center Director” in alphabetical order;
- bb. Removing the definition “Specialized Services” and adding the definition “Specialized services” in its place;

- cc. Revising the definition “Training”; and
- dd. Adding the definition “Training record” in alphabetical order.

The additions and revisions read as follows:

§ 130.110 Definitions.

Accreditation process. An evaluation process to assist an SBDC with assessing its processes and outlining areas needing improvement by providing recommendations to strengthen delivery of services and assistance.

Applicant organization. A qualified eligible entity that applies for Federal financial assistance to establish, administer, and operate an SBDC network under a new or renewed cooperative agreement.

Application. Also referred to as the proposal or the renewal application, the written submission by a new applicant organization or an existing recipient organization describing its projected SBDC activities for the upcoming budget period and requesting SBA funding for use in its operations.

Area of service. As designated in the cooperative agreement, the state or region in which an applicant organization proposes to provide services, or in which a recipient organization currently provides services.

Associate Administrator/Entrepreneurial Development (AA/ED). The individual who is appointed by the SBA Administrator to oversee the Office of Entrepreneurial Development (OED), where the SBDC Program is located.

Associate Administrator/Small Business Development Centers (AA/SBDC). The individual who is statutorily mandated to administer the SBDC Program.

* * * * *

Cash match. Non-Federal funds budgeted and expended by the recipient organization and/or sponsoring SBDC organization for direct costs of the project. Cash match excludes indirect costs, overhead costs, in-kind contributions, and program income. See 2 CFR 200.306.

Clearinghouse. A source of market and industry information made available to all SBDC networks to assist clients and supports the exchange of information between SBDCs.

Client. A nascent entrepreneur or existing small business seeking services provided by the SBDC.

Cognizant agency. The Federal awarding agency that provides the predominant amount of direct funding to a recipient. See 29 CFR 99.105.

Cooperative agreement. A legal instrument of financial assistance

between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302–6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or passthrough entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity’s direct benefit or use.

(2) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only: (A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance.

(4) Is a negotiated legal agreement between SBA and a recipient organization containing the terms and conditions under which SBA provides Federal funds for the performance of SBDC activities.

* * * * *

Counseling. Qualifying technical or management assistance, as defined in the cooperative agreement, provided through the SBDC Program to clients on an individual basis, as established by policy.

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

Direct costs. Expenditures that can be identified specifically with a final cost objective and are further defined in 2 CFR part 200.

Dispute. A programmatic or financial disagreement that the recipient organization requests be handled in accordance with the dispute resolution procedures set forth at § 130.630.

District Office. The local SBA office, in collaboration with the OSBDC, is charged with: ensuring that small business market needs are met by the SBDC; conducting the regularly scheduled compliance reviews; monitoring statements as required; and

collaborating with the SBDC to perform joint events and trainings.

* * * * *

Grants Management Specialist. An SBA employee within the Office of SBDC, designated by the AA/SBDC, who meets the Office of Management and Budget (OMB) standards and certifications and is responsible for the budgetary review, award, and administration of one or more SBDC cooperative agreements.

In-kind contributions. Property, facilities, services, or other nonmonetary contributions from non-Federal sources. See 2 CFR part 215 (OMB Circular A-110) and part 143 of this chapter, as applicable.

Indirect costs. Costs generally incurred for a common or joint purpose. See 2 CFR part 220 (OMB Circular A-21), 225 (OMB Circular A-87), and/or 230 (OMB Circular A-122).

Insular areas. Territories include the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands. See 48 U.S.C. 1469a.

Key personnel. Principal staff of the Lead Center and SBDC service centers, including SBDC Lead Center Directors, SBDC Service Center Directors, or managers of International Trade Centers, Technology Program Centers, and directors of other SBDC specialty programs and any other leadership positions identified by the SBDC network.

Lead Center. The administrative office of the recipient organization that operates and manages an SBDC network.

Lobbying. “Lobbying” as described in 2 CFR parts 220 (OMB Circular A-21), 225 (OMB Circular A-87), and 230 (OMB Circular A-122) and Public Law 101-121, section 319, which discuss the limitations on use of appropriated funds to influence decisions of certain of Federal officials, including Members of Congress, Federal contracting, and financial transactions.

Matching funds. The combined amounts of non-Federal cash and noncash resources proposed for the cooperative agreement or claimed to fulfill statutory match requirements.

Notice of funding opportunity. The annual solicitation that an applicant organization or recipient organization must respond to in its initial or renewal application.

Notice of non-renewal. A notice provided to an SBDC stating that the SBA will not renew the cooperative agreement with the current recipient organization.

Notice of suspension. A notice provided to an SBDC stating that the SBDC is under suspension.

Notice of termination. A notice provided to an SBDC stating that the SBDC is terminated.

Office of Small Business Development Centers (OSBDC). The SBA program office providing leadership and program oversight, managing the funding formula, program budget, and the establishment and maintenance of all program policy over the national SBDC network.

Overmatched amount. Contributions of non-Federal cash and of non-cash resources for authorized SBDC activities in excess of the statutorily required match.

Prior approval. The written concurrence from the appropriate SBA AA/SBDC, Deputy Associate Administrator for the Office of Small Business Development Centers, Grants Management Officer, Grants Management Specialist, or Program Manager for a proposed action or amendment to the SBDC cooperative agreement.

* * * * *

Program funds. Also referred to as project funds and defined as all funds authorized under the cooperative agreement including, but not limited to, Federal funds, cash match, non-cash match from indirect costs, in-kind contributions, and program income revenues.

Program income. Gross income earned as a result of the Federal award during the period of performance, including funds received under a sponsorship agreement, as defined in 2 CFR 200.80.

Program Manager. An SBA employee designated by the AA/SBDC who oversees and monitors the SBDC network operations, including meeting the statutorily required programmatic reviews.

Program performance data. Any anonymous data or information that captures the outputs of the SBDC service center and outcomes of services provided to clients.

Project Officer. The individual who serves as the primary local contact for the SBDC, conducts regular compliance oversight as required by AA/SBDC, and works in conjunction with the Program Manager.

Project period. The total annual period of performance for an award made under the notice of funding opportunity.

Proposal. Also known as the application, the written submission by a new applicant organization or an

existing recipient organization describing its projected SBDC activities for the upcoming budget period and requesting Federal funding for use in its operations.

Recipient organization. The selected applicant organization receiving Federal funding to deliver SBDC services under a cooperative agreement.

* * * * *

SBDC Lead Center Director. Also referred to as the State/Region Director, an individual or position whose time is allocated to the SBDC grant program or other related small business grant programs that provide comparable management and technical assistance to the small business community in accordance with the cooperative agreement. For the purposes of meeting the Program requirements, no less than 75 percent of the SBDC Lead Center Director's time and effort must be devoted specifically to the SBDC grant. The SBDC Lead Center Director has clear and complete control of all SBDC Program funds.

SBDC network. The Lead Center, SBDC service centers, and SBDC satellite locations funded and affiliated by sub-agreements and comprising a single service delivery network administered by a recipient organization.

SBDC satellite location. A geographic point of service delivery that operates on a full- or part-time basis under direct management of an SBDC Lead Center Director or SBDC Service Center Director.

SBDC service center. An entity operating full-time authorized by the Lead Center to perform SBDC counseling and training services. Any applicant commencing after January 1, 1992, establishing service centers within its area of service, to the extent practicable, should be primarily housed within institutions of higher education or a Women's Business Center (WBC) operating pursuant to section 29 of the Small Business Act (15 U.S.C. 656) as stated in section 21(a)(1) of the Small Business Act (15 U.S.C. 648(a)(1)).

SBDC Service Center Director. The individual responsible for SBDC Program implementation and management at an SBDC service center within an SBDC network.

* * * * *

Specialized services. SBDC services other than counseling or training, e.g., extensive research, hiring outside consultants for a client, translation services, etc.

* * * * *

Training. An educational activity or event presented by an SBDC that

delivers a structured program of knowledge on an entrepreneurial or business-related subject, as established in the cooperative agreement.

Training record. A record that provides aggregate data about a training event to include training topic and program format.

■ 4. Amend § 130.200 by:

- a. Removing the paragraph designation and heading from paragraph (a) introductory text;
- b. Removing paragraph (b);
- c. Redesignating paragraphs (1) through (4) as paragraphs (a) through (d);
- d. Redesignating paragraphs (5) and (6) as paragraph (h) and (g), respectively;
- e. Adding paragraphs (e) and (f);
- f. In newly redesignated paragraph (g), removing the period and adding “; or” in its place; and
- g. Revising newly redesignated paragraph (h).

The additions and revision read as follows:

§ 130.200 Eligible entities.

* * * * *

(e) A Women’s Business Center operating pursuant to section 29 of the Small Business Act (15 U.S.C. 656);

(f) The Commonwealth of the Northern Mariana Islands SBDC must have its principal office located in the Commonwealth of the Northern Mariana Islands (CNMI) and must:

- (1) Be a CNMI government or agency;
- (2) Be a regional entity;
- (3) Be a CNMI-chartered development, credit, or finance corporation;
- (4) Be an institution of higher education (including but not limited to any land-grant college or university, any college or school of business, engineering, commerce, or agriculture, community college or junior college);
- (5) Be a current SBA Women’s Business Center (WBC); or
- (6) Be any entity formed by two or more of the entities in paragraphs (f)(1) through (5) of this section;

* * * * *

(h) Any entity operating continually as a recipient organization on or before December 31, 1990.

■ 5. Revise § 130.300 to read as follows:

§ 130.300 Small Business Development Centers (SBDCs).

The Small Business Development Center Program is established under the statutory authority of the Small Business Act (15 U.S.C. 648) and administered through cooperative agreements issued to recipient organizations.

■ 6. Revise § 130.310 to read as follows:

§ 130.310 Area of service.

(a) The AA/SBDC will designate, in the cooperative agreement, the geographic area of service of each recipient organization. Generally, no more than one recipient organization may be located in a state.

(1) The AA/SBDC may determine that making awards to multiple recipient organizations in a state is necessary to more effectively implement the Program and provide services to all interested small businesses.

(2) Once the Administration has entered into a cooperative agreement, a subsequent decision to change the recipient organization’s area of service will be considered a non-renewal or termination. This decision will be subject to the procedures outlined in § 130.700.

(b) The recipient organization must locate its Lead Center and SBDC service centers in the designated area of service to ensure that services are readily accessible to all small businesses within the designated area of service.

(c) Any applicant commencing after January 1, 1992, must ensure that any new SBDC service centers established within its area of service, to the extent practicable, are primarily housed within institutions of higher education or a WBC operating pursuant to section 29 of the Small Business Act (15 U.S.C. 656) as stated in section 21(a)(1) of the Small Business Act (15 U.S.C. 648(a)(1)).

(d) The allocation of resources, including site locations of the Lead Center and the SBDC service centers, will be reviewed for adequacy of coverage by SBA as part of the application review process for each budget period.

§ 130.320 [Removed]

■ 7. Remove § 130.320.

§§ 130.330, 130.340, 130.350, and 130.360 [Redesignated as §§ 130.320, 130.330, 130.340, and 130.350]

■ 8. Redesignate §§ 130.330, 130.340, 130.350, and 130.360 as §§ 130.320, 130.330, 130.340, and 130.350.

■ 9. Amend newly redesignated § 130.320 by:

- a. Revising paragraph (a);
- b. Adding a sentence at the end of paragraph (b);
- c. Revising paragraph (c);
- d. Redesignating paragraphs (d) and (e) as paragraphs (g) and (h);
- e. Adding new paragraphs (d) and (e) and paragraph (f); and
- f. Revising newly redesignated paragraphs (g) and (h).

The revisions and additions read as follows:

§ 130.320 Operating requirements.

(a) The recipient organization has the contractual responsibility for performing the duties of the Lead Center in accordance with the cooperative agreement. The Lead Center must be an independent department within the recipient organization, having its own staff, including a full-time SBDC Director.

(b) * * * The Lead Center must conduct and document annual financial and programmatic reviews and evaluations of its SBDC service centers consistent with § 130.820(a).

(c) The Lead Center’s and SBDC service center’s services will be available to the public throughout the year during the normal hours of the business community. In addition, every effort should be made to provide assistance, including during nonbusiness hours, both in-person and virtually, as appropriate, to meet local community business demands and needs. Variations from these schedules or other anticipated closures will be included in the new or annual renewal application. Emergency closures will be reported to the SBA District Office as soon as is feasible.

(d) The specific identification “Small Business Development Center” must be a part of the official name of every SBDC Lead Center and SBDC service center within the SBDC network, unless waived by the AA/SBDC.

(e) Any entity that is using the term “Small Business Development Center” and under contract with the Lead Center and receiving program funds, whether receiving Federal funding or not, is considered a part of the recipient organization’s network and as such the recipient organization is required to report to the OSBDC each SBDC service center’s performance as well as any funds or program income generated by the activities of that Service Center.

(f) Each SBDC must maintain a minimum number of export and trade certified counselors to assist clients develop export and international trade opportunities. The standard for establishing the number of counselors required to have this certification is based on the total number of full-time equivalent (FTE) counseling employees in an SBDC’s network. The minimum number of certified counselors for an SBDC network is the *lesser* of:

- (1) Five counselors; or
- (2) Ten percent of the total number of FTE counselors in the network.

(g) The Lead Center and all its SBDC service centers must implement and have in effect at all times, a uniform and enforceable conflict of interest policy applicable to all SBDC employees,

contractors, consultants, and volunteers and must be signed annually. At a minimum, this policy must be consistent with the conflict of interest principles set forth in 2 CFR 2701.112.

(h) The SBDC network will comply with 13 CFR parts 112, 113, 117, and 136 requiring that no person, on the grounds of race, color, handicap, marital status, national origin, race, religion, or gender, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the SBDC network.

■ 10. Amend newly redesignated § 130.330 by:

- a. Revising paragraph (a);
- b. Removing the words “are encouraged to” from paragraph (b)(1) and adding in their place the word “must”;
- c. Revising paragraphs (b)(2) through (5) and (c);
- d. Adding paragraph (d).

The revisions and addition read as follows:

§ 130.330 SBDC services and restrictions on service.

(a) *Services.* The SBDC network, to the extent practicable, must provide prospective entrepreneurs and existing small businesses, known as clients, with counseling, access to training, and specialized services. The SBDC must create counseling records for clients when required by the cooperative agreement. The services provided must relate to the formation, financing, management, and operation of small business enterprises. The network must provide services that meet local needs as determined through periodic needs assessments, which are continually improved to keep pace with changing local small business needs. It is the responsibility of the recipient organization to change local SBDC service centers, as necessary, to meet the needs of the communities it serves in accordance with §§ 130.310 and 130.620. See section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(36)) for the full list of compulsory services. To the extent possible, SBDCs will work in collaboration with other Federal, state, tribal, and local government programs that assist small businesses and will coordinate and cooperate, to the extent practicable, with other local public and private providers of small business assistance. An SBDC Lead Center should use and compensate qualified small business vendors as one of its resources.

(b) * * *

(2) SBDCs may provide assistance and guidance with the necessary documentation required for applications for capital assistance; including assistance for SBA loan products and services, including small dollar loans, free of charge as stated in § 130.470.

(3) SBDCs should prepare their clients to represent themselves to lending institutions. SBDCs may attend meetings with lenders to assist clients in preparing financial packages; however, SBDCs may not attest to a client’s readiness or creditworthiness to the lending institution either verbally or in writing.

(4) SBDCs may participate on boards and panels of financial institutions and with outside organizations but may not be involved in any final credit decisions involving SBDC clients or in making or servicing loans.

(5) With respect to SBA loan guaranty programs, SBDCs may accompany an applicant organization appearing before SBA or a lender but may not advocate for, promote, recommend approval or otherwise attempt in any manner to influence SBA or a lender to provide financial assistance to any of its clients.

(c) *Special emphasis initiatives.* Periodically, SBA may identify, and include in the cooperative agreement, portions of the general population to be targeted for assistance by SBDCs and specific focus areas including, but not limited to: base closure assistance; cybersecurity and preparedness; employee ownership program; and intellectual property protections. (Refer to current cooperative agreement.)

(d) *Portable assistance.* The current cooperative agreement is a startup and sustainability non-matching program to be conducted by eligible SBDCs in communities that are economically challenged as a result of a business or government facility downsizing or closing, which has resulted in the loss of jobs or small business instability. The funds will be used for small business development center personnel expenses and related small business programs and services.

■ 11. Revise newly redesignated § 130.340 to read as follows:

§ 130.340 Specific program responsibilities.

(a) *Policy development.* The AA/SBDC 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 guidelines, and Executive orders. The AA/SBDC will, to the extent practicable, consult with the recognized association.

(b) *Program administration.* The AA/SBDC or designee will recommend the annual program budget, establish appropriate funding levels in compliance with the statute, and review the annual budgets submitted by each applicant. The AA/SBDC will also select applicants to participate in the Program, to maintain a clearinghouse to provide for the dissemination and exchange of information between SBDCs, and to conduct audits of recipients of SBDC grants.

(c) *Responsibilities of SBDC Lead Center Directors.* (1) The SBDC Lead Center Director must be an individual dedicating not less than 75 percent of their time to the supervision and control of the SBDC on behalf of the recipient organization. The position may not be held by a company or contractor.

(2) The SBDC Lead Center Director position must have direct reporting authority, at a minimum, equivalent to that of a college dean in a university setting or the third level of management or administration within a state agency.

(3) The Lead Center Director will direct and monitor program activities and financial affairs of the SBDC network to ensure effective delivery of services to the small business community, and compliance with applicable laws, regulations, 2 CFR part 200, and the terms and conditions of the cooperative agreement.

(4) The SBDC Lead Center Director must have the authority necessary to control all personnel, budgets, and expenditures under the cooperative agreement.

(5) The SBDC Lead Center Director will serve as the SBA’s principal contact for all matters involving the SBDC network including, but not limited to, ensuring that state and local needs are addressed; financial and programmatic reporting are submitted; service centers are providing access to training; employees have experience necessary to conduct meaningful counseling; etc.

■ 12. Amend newly redesignated § 130.350 by:

- a. Removing the word “must” from paragraph (a)(1) and adding in its place the word “will”;
- b. Revising paragraph (a)(2);
- c. Removing “Area of Service” from paragraph (a)(3) and adding in its place “area of service”;
- d. Revising paragraphs (a)(4) and (6) and (b)(1); and
- e. Adding paragraphs (b)(3) through (5).

The revisions and additions read as follows:

§ 130.350 SBDC advisory boards.

(a) * * *

(2) This advisory board will be referred to as a State SBDC Advisory Board in a state/territory having only one recipient organization, and a Regional SBDC Advisory Board in a state having more than one recipient organization.

* * * * *

(4) New Lead Centers must establish a State or Regional SBDC Advisory Board by the beginning of the second project period.

* * * * *

(6) The reasonable cost of travel of any Board member for official Board activities may be paid out of the SBDC's budgeted funds. Federal and program funds are not to be used to compensate advisory board members for non-travel related expenses such as time and effort.

(b) * * *

(1) The SBA will establish a National SBDC Advisory Board, appointed by the SBA Administrator, and comprised of members who are not Federal employees. The Board will elect a chairperson. Three members of the Board will be from universities, or their affiliates and the remainder will be from small businesses or associations representing small businesses. Board members will serve staggered three-year terms. The SBA Administrator may appoint successors to fill unexpired terms.

* * * * *

(3) The reasonable cost of travel of any National SBDC Advisory Board member for official Board activities will be paid by SBA out of SBDC line-item program funds.

(4) Each member of the Board will be entitled to be reimbursed for expenses as a member of the Board.

(5) The Board will meet at least semiannually and at the call of the Chairman of the Board.

■ 13. Add a new § 130.360 to read as follows:

§ 130.360 Selection of the SBDC Lead Center Director.

(a) *Selection.* Selection of an SBDC Lead Center Director must be accomplished in accordance with the guidelines set forth in the notice of funding opportunity and cooperative agreement.

(b) *Vacancy.* (1) The recipient organization must notify the appropriate SBA District Director (DD), Regional Administrator, and AA/SBDC within ten business days of either:

(i) Being notified by the incumbent SBDC Lead Center Director of their intent to vacate the position; or

(ii) Its formal decision to remove the incumbent SBDC Lead Center Director.

(2) If the position will be vacated prior to the selection of a replacement, the recipient organization must appoint an interim SBDC Lead Center Director, prior to the vacancy, who will serve in that capacity until a permanent SBDC Lead Center Director is in position.

(3) The recipient organization must inform the SBA District Director, Regional Administrator, and the AA/SBDC within ten business days of the appointment of the interim SBDC Lead Center Director and provide that individual's contact information.

(4) An interim Lead Center Director must allocate at least 75 percent of their time and effort to the SBDC Program until a permanent SBDC Lead Center Director is in position. This must be documented in accordance with the policies of the recipient organization. An interim SBDC Lead Center Director must be knowledgeable about sponsored programs. The appointment period for such interim SBDC Lead Center Director will not exceed 120 days. Should more time be needed the recipient organization must obtain prior approval from the AA/SBDC for an extension.

■ 14. Add § 130.370 to read as follows:

§ 130.370 Contracts with other Federal agencies.

(a) An SBDC Lead Center or SBDC service center organization may enter into a contract or grant with a Federal department or agency to provide specific assistance to small business concerns in accordance with paragraphs (b) and (c) of this section.

(b) Prior to bidding on a non-SBA Federal award or contract, the SBDC Lead Center or service center must obtain written consent from the AA/SBDC or designee regarding the subject and general scope of the award or contract to ensure that performance under the award or contract does not represent a conflict with the SBA's cooperative agreement. The AA/OSBDC or designee shall respond to any written request within five business days.

(c) Federal funds from other Federal programs (except for certain Community Development Block Grant program funds) may not be counted as match for purposes of the SBDC Program. In addition, match expenditures reported to the SBA under the cooperative agreement may not be used or reported as match for another Federal program.

■ 15. Add § 130.380 to read as follows:

§ 130.380 Client privacy.

(a) SBDCs, including their contractors and other agents, are not permitted to disclose the Client's name, address, email address, or telephone number,

hereafter referred to as "client contact data," of individuals or small businesses that obtain any type of assistance from the Program to any person or entity other than the SBDC, without the consent of the client, except in instances where:

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

(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 § 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; or

(3) SBA requires client contact data to directly survey SBDC clients.

(b) SBDCs 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 or studies that help stakeholders better understand how the services the client received affect their business outcomes over time. These surveys or studies would include, but not be limited to:

- (1) Studying evaluation and performance management;
- (2) Measuring the effect and economic or other impact of Agency programs;
- (3) Assessing public and SBDC partner needs;
- (4) Measuring customer satisfaction;
- (5) Guiding program policy development;
- (6) Improving grant-making processes; and

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

(c) SBDCs may not deny access to services to clients solely based on their refusal to provide consent as referenced in this section.

(d) Any reports or studies on program activity produced by SBDC and/or the Administrator, including their 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.

(e) SBDCs and the Administrator, including their contractors and other agents, must obtain consent from the client prior to publishing media or reports that identify an individual client.

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

■ 16. Revise § 130.400 to read as follows:

§ 130.400 Application procedures.

All SBDC applicants must comply with the annual notice of funding opportunity, including format, conditions, submission requirements, and due dates, for their new or renewal application to receive consideration.

■ 17. Revise § 130.410 to read as follows:

§ 130.410 New applications.

(a) *New applicants.* New applicants must comply with the requirements set forth in the applicable notice of funding opportunity, including format, conditions, and due dates for their applications to receive consideration.

(b) *Consideration.* Except in cases involving insular areas, only those applicants operating under § 130.200 and incorporated solely within the state where the new SBDC is to be located will receive consideration.

(c) *Recruiting and selecting new recipient organizations.* (1) SBA will use a fair, open and competitive procurement process to solicit proposals for new SBDC Program awards.

(2) After completion of an objective review process, the AA/SBDC will make the final selection and notify the successful applicant.

(3) The newly selected recipient organization may, with prior written approval from the SBA, incur qualified pre-award matching expenditures for the establishment of the Lead Center office, to recruit Lead Center staff, and to cover other related start-up expenditures to the extent permitted under 2 CFR 215.25(e)(1).

■ 18. Revise § 130.420 to read as follows:

§ 130.420 Renewal applications.

(a) The recipient organization will submit the renewal application to the OSBDC using the submission process outlined in the annual notice of funding opportunity.

(b) If the OSBDC chooses to not renew the award of an existing recipient organization or the recipient organization elects not to reapply, the OSBDC will award a cooperative agreement for the conduct of an SBDC project to a new recipient organization in the same area of service using a competitive process. If the OSBDC has initiated a non-renewal or termination action, the Agency will not issue the new award until all administrative

remedies have been exhausted. For further information regarding the termination and non-renewal procedures, see § 130.700.

(c) Significant factors considered in the renewal application review will include:

(1) The applicant's ability to obtain matching funds;

(2) The quality of prior performance under the cooperative agreement as measured by client satisfaction rate;

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

(4) Corrective measures implemented as a result of examinations conducted; and

(5) The accreditation provisions of § 130.810(c) including any conditions, the most current accreditation report, and corrective measures implemented, affecting the recipient organization and the SBDC network.

(d) The OSBDC will review the renewal application for conformity with the notice of funding opportunity. The AA/SBDC may request additional information and documentation prior to issuing the cooperative agreement.

■ 19. Revise § 130.430 to read as follows:

§ 130.430 Application decisions.

(a) New applications will either be accepted or rejected in accordance with the evaluation criteria set forth in the applicable notice of funding opportunity. The AA/SBDC may approve, or conditionally approve, or deny any new application. The AA/SBDC may approve or conditionally approve or deny a renewal application. The AA/SBDC may also reject a renewal application after following due process in accordance with the procedures set forth in § 130.700. If a renewal application is conditionally approved, the requirements that the recipient organization must meet in order to obtain full and unconditional approval, will be specified as special terms and conditions in the cooperative agreement.

(b) In the event of a conditional approval, the SBA may 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 comply with the special terms and conditions of the award to the satisfaction of the AA/SBDC within the allotted time period, the AA/SBDC may suspend, non-renew, or terminate the cooperative agreement with the SBDC, in accordance with the procedures set forth in § 130.700.

■ 20. Revise § 130.440 to read as follows:

§ 130.440 Maximum grant.

(a) No recipient organization will receive an SBDC grant, in any fiscal year under a cooperative agreement, 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)(C) of the Small Business Act (15 U.S.C. 648(a)(4)(C)). This limit does not apply to the distribution of supplemental funds, or to grants provided pursuant to sections 21(a)(4)(C)(viii) and 21(a)(6) of the Small Business Act (15 U.S.C. 648(a)(6)).

(b) Additional grants are subject to the limitations set forth in section 21(a)(6) of the Small Business Act unless the statute providing for the additional grant states otherwise.

■ 21. Amend § 130.450 by:

■ a. Revising the second and third sentences of paragraph (a);

■ b. In paragraph (b):

■ i. Revising the third sentence and removing the fourth sentence; and

■ ii. Removing "Cooperative Agreement" and adding in its place "cooperative agreement";

■ c. Revising paragraphs (c) through (e); and

■ d. Adding new paragraphs (f) through (h).

The additions and revisions read as follows:

§ 130.450 Matching funds.

(a) * * * Cash match must be equal to or greater than 50 percent of the SBA funds used by the SBDC. The remaining match required to equal the one-to-one match requirement may be provided through any allowable combination of additional cash, in-kind contributions or indirect costs.

(b) * * * Any additional SBA requirements, specifications, or deliverables must be clearly identified in the budget narrative. * * *

(c) Under the authority of 48 U.S.C. 1469a(d), the AA/SBDC may, at his/her discretion, waive any requirement of matching funds for an insular territory otherwise required by law to be provided. Notwithstanding any other provision of law, in the case of American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, any department or agency shall waive any requirements for local matching funds under \$200,000, including in-kind contributions, required by law to be provided by American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(d) All applicants must submit a certification of cash match and program

income. This certification must be executed by an authorized official of the recipient organization and must identify any SBDC service center organization(s) providing cash match under a subcontract or other agreement.

(e) In addition to the Federal and program income funds, all matching funds must be under the direct management of either the SBDC Lead Center Director or an SBDC Service Center Director, when budgeted under an SBDC service center organization. If in-kind contributions are utilized by the SBDC, the State Director or an SBDC Service Center Director is then considered to be in control of those contributions.

(f) The Grants Management Specialist will determine whether matching funds and cash match set forth in the budget proposal are sufficient to issue the cooperative agreement.

(g) Recipient organizations are not required but encouraged to identify overmatched amounts as part of the cooperative agreement. Overmatching expenditures are those which are derived from eligible matching sources; are reasonable, allowable, and allocable to the SBDC program; are over and above the minimum match required to the Federal expenditures; and are included on the required SBDC financial reporting to SBA for the project period.

(1) Recipient organizations are encouraged to identify overmatched amounts as part of the cooperative agreement. The recipient organization must fully identify the amount and sources of claimed overmatched amounts. If overmatched amounts are reported, they are subject to the provisions of the cooperative agreement and SBA biennial programmatic and financial examinations.

(2) An overmatched amount can be applied as matching funds for any funding increase (*i.e.*, supplemental funds) received by the SBDC during the budget period, as long as the total cash match contributed by the SBDC is 50 percent or more of the total SBA funds tendered during the budget period and provided that the total match is still 100 percent.

(3) Allowable overmatched amounts which have not been used in the manner described in this section may, with the approval of the AA/SBDC, 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 will be considered matching funds.

(h) The following sources cannot be used as matching funds for the SBDC network:

- (1) Uncompensated student labor;
- (2) SCORE, SBA, Women's Business Centers, or other SBA resource partners;
- (3) Program income or fees collected from individuals or small businesses receiving assistance;
- (4) Federal funds other than Community Development Block Grant (CDBG) funds;
- (5) In-kind contributions, or indirect costs not solely dedicated to the SBDC Program, or under its control;
- (6) Any resource allocated and claimed as a matching cost to another federally funded program; or
- (7) Funds or other resources provided for an agreed upon scope of work inconsistent with the authorized activities of the SBDC Program.

■ 22. Revise § 130.460 to read as follows:

§ 130.460 Budget justification.

(a) *General.* The SBDC Lead Center Director, as a part of the annual renewal proposal, 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 will be reviewed annually upon submission of a renewal application.

(b) *Direct costs.* At least 80 percent of SBA funding must be allocated to the direct cost of program delivery.

(c) *Indirect costs.* If the applicant organization or recipient organization waives all indirect costs, then 100 percent of SBA funding must be allocated to program delivery. If the reimbursements of some, but not all, indirect costs are waived to meet the matching funds requirement, the lesser of the following may be allocated as reimbursed indirect costs of the Program and charged against the Federal contribution:

- (1) Twenty percent of Federal contribution; or
- (2) The amount remaining after the waived portion of indirect costs is deducted from the total indirect costs allowed by the SBA.

(d) *Separate SBDC service provider budgets.* The applicant organization shall include separate budgets for all SBDC service providers in conformity with 2 CFR part 220, appendix A. Applicable direct cost categories and indirect cost base/rate agreements will 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 will 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, in accordance with OMB guidelines:

(1) Negotiated with the SBA Project Officer; or

(2) Apply the OMB *de minimis* rate.

(e) *Cost principles.* Principles for determining allowable costs are contained in 2 CFR part 200, subpart E.

(f) *Salaries.* (1) Where the recipient organization is an educational institution, the salaries of the SBDC Lead Center Director and the SBDC Service Center Director at a minimum 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 Lead Center 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, the size of the SBDC budget, the number of service centers, and the individual's experience and background when determining the salary.

(2) Salaries for Lead Center Directors should be comparable to salaries paid Lead Center Directors in other states or regions with comparably sized programs, responsibilities, and authority.

(3) 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.

(g) *Equipment.* In accordance with 2 CFR part 200, capital expenditures for equipment must have the prior approval of the Program Manager of the OSBDC, either through a specific disclosure in an annual cost proposal or through an approved amendment to an existing cooperative agreement.

(h) *Travel.* (1) All travel must be separately identified in the proposed budget under the categories of: planned in-state/region, planned out-of-state/region, unanticipated in-state/region, or unanticipated out-of-state/region. Unplanned travel estimates may be based on the SBDC's experience.

(2) 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.

(3) Any proposed unplanned out-of-state/region travel exceeding the approved amount budgeted for this category must be submitted to the SBA for approval on a case-by-case basis prior to traveling.

(4) All foreign travel requests must be submitted to the appropriate District Director and the SBDC Program Manager for review and provided to the AA/SBDC for final approval in accordance with the notice of funding opportunity. Foreign travel charged to the SBDC cooperative agreement or performed by SBDC staff, while on duty for the recipient organization, must be approved in advance.

(i) Planned foreign travel costs allocable to the SBDC cooperative agreement for SBDC network staff may be approved by AA/SBDC through the annual proposal process, but such planned costs must be fully disclosed and justified in the budget narrative for Agency review. Prior approval should be obtained from the AA/SBDC prior to travel in accordance with 2 CFR part 200.

(ii) Unanticipated foreign travel must be approved using the process set forth in this paragraph (h).

■ 23. Add § 130.465 to read as follows:

§ 130.465 Restricted and prohibited costs.

(a) SBA prohibitions are consistent with those outlined in 2 CFR part 200.

(b) An SBDC must not use project funds as collateral for a loan or other such monetary purpose.

(c) An SBDC must not use project funds for memorabilia, gifts, prizes, souvenirs, entertainment, alcoholic beverages, amusement, social activities, or any other such costs.

(d) Prior written approval from the AA/SBDC is need for SBDC project funds to be used for the purpose of fundraising activities and costs. SBDCs may include in initial applications and renewal applications proposed fundraising activities. After issuance of an approved cooperative agreement, an SBDC wishing to seek prior approval for new fundraising activities not already approved should follow the prior approval guidance in the cooperative agreement. Prohibited fundraising activities include, but are not limited to:

(1) Costs of organized fundraising, endowment drives;

(2) Financial or capital campaigns; or

(3) Solicitation of gifts and bequests.

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

■ 24. Revise § 130.470 to read as follows:

§ 130.470 Fees.

(a) An SBDC may charge clients a reasonable fee to cover the costs of training (sponsored or cosponsored) by the SBDC, the sale of books, the rental of equipment or space, research work, hiring outside consultants for a particular client, or other specialized services.

(b) SBDC network entities, staff, consultants, or volunteers must not solicit or accept fees or other compensation for counseling services, including, but not limited to, business or marketing plan development, loan packaging or credit application assistance, or other advisory services described in section 21 of the Small Business Act.

■ 25. Revise § 130.480 to read as follows:

§ 130.480 Program income.

(a) Program income and interest earned on program income, may only be used for authorized purposes, in accordance with 2 CFR 200.307 and the cooperative agreement, such as to expand the quantity or quality of services, resources or outreach provided by the SBDC network.

(b) Program income may not be reported or used as a matching resource. Unused program income must be carried over to the subsequent budget period by the SBDC network; however, the aggregate amount of network program income cannot exceed 25 percent of the total SBDC budget (Federal and matching expenditures).

(c) Program income exceeding 25 percent of the total approved SBDC budget must be expended by the SBDC network prior to the end of the budget/project period in which the excess occurs.

(d) The Lead Center must report the consolidated program income sources and uses as an attachment to the financial status report for the SBDC network during the budget period. The SBDC must provide a narrative describing how program income was used to further program objectives.

■ 26. Add § 130.490 to read as follows:

§ 130.490 Property standard.

See 2 CFR part 200, subpart D.

■ 27. Revise § 130.500 to read as follows:

§ 130.500 Funding.

See 2 CFR 200.305.

■ 28. Revise § 130.600 to read as follows:

§ 130.600 Cooperative agreement.

(a) *Cooperative agreement provisions.* A recipient organization will incorporate into its SBDC sub-agreements and contracts the provisions of the cooperative agreement.

(b) *Sub-agreements.* SBA reserves the right to disapprove any sub-agreement entered into by recipient organizations with SBDC service center organizations, vendors, or contractors.

(c) *Goals and milestones.* (1) The AA/SBDC or designee will develop performance measurements for SBDC networks and include provisions for their achievement in the cooperative agreement.

(2) The AA/SBDC or designee will negotiate with the designated association and Lead Center to establish the annual goals, milestones, and activities for the cooperative agreement.

(3) Failure to meet the goals and milestones of the cooperative agreement may be considered in part of the determination for suspension, termination, or non-renewal in accordance with the dispute resolution procedures set forth in § 130.630.

(4) Agency loan goals may not be negotiated or incorporated into the cooperative agreement without the prior written approval of the AA/SBDC.

(d) *Procurement policies and procedures.* (1) Contracts and sub-agreements supported with funds provided under the cooperative agreement must comply with the procurement procedures of the recipient organization.

(2) Contracting procedures must encourage open competition among qualified vendors and promote the effective, efficient, and responsible use of program resources and OMB guidance.

(3) Contracting procedures should provide for domestic sourcing preferences to the greatest extent practicable, showing preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.

§ 130.610 [Amended]

■ 29. Amend § 130.610 by:

■ a. Removing “Cooperative Agreement” and adding “cooperative agreement” in its place; and

■ b. Removing the last sentence in the paragraph.

■ 30. Revise § 130.620 to read as follows:

§ 130.620 Revisions and amendments to cooperative agreements.

(a) *Requests for revisions.* The cooperative agreement may not be

unilaterally amended, modified, or revised by the recipient organization. Rather, a recipient organization must submit a written request to AA/SBDC along with a copy to the appropriate District Office when it wants to make one or more revisions to the cooperative agreement. Written approval from the AA/SBDC is required prior to the implementation of a proposed revision. Revisions that require amendment of the cooperative agreement include:

(1) Any change in project scope or objectives that will substantially change outcomes described in the cooperative agreement;

(2) Budget revisions exceeding the limit established in the cooperative agreement; and

(3) Any proposed sole-source or one-bid contracts exceeding the limits established by applicable administrative regulations or OMB.

(b) *Emergency authorizations.* (1) In consultation with the Recognized Organization, the AA/SBDC may amend one or more cooperative agreements to authorize unanticipated out-of-state travel by SBDC personnel responding to a need for services in a presidentially or SBA Administrator declared major disaster area. Notification of this type of authorization will be accomplished through the publication of an SBA Notice in the **Federal Register**.

(2) Proposed and actual travel costs incurred under an emergency authorization must comply with the requirements of § 130.460(h), as well as the relevant notice of funding opportunity and OMB guidelines.

(c) *Supplemental funding.* If supplemental funds are available for distribution, SBA will publish a notice of funding opportunity in consultation with the Recognized Organization.

■ 31. Revise § 130.630 to read as follows:

§ 130.630 Dispute resolution procedures.

(a) *Financial disputes.* (1) A recipient organization wishing to resolve a financial dispute must submit a written statement to the appropriate Grants Management Officer with copies to the Project Officer describing the subject of the dispute, along with any relevant documentation. The Grants Management Officer will 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 SBA, it may file an appeal with the AA/SBDC within 30 calendar days of the date of receipt of the unfavorable decision.

(3) The AA/SBDC 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/SBDC within 15 calendar days of receipt of the request. The AA/SBDC 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/SBDC, 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/SBDC’s written decision. Copies of the appeal must also be sent to the Grants Management Specialist and the Program Manager. If the recipient organization elects not to file an appeal with the Committee, the decision of the AA/SBDC becomes the final Agency decision on the matter.

(5) A recipient organization may request a hearing before the Committee, but such requests will not be granted, unless material facts are substantially in dispute. Legal briefs and other technical forms of pleading are not required. However, appeals to the Committee must be in writing and contain at least the following information and supporting documentation:

(i) Name and address of the recipient organization;

(ii) Name and address of the appropriate SBA District Office(s);

(iii) A copy of the underlying cooperative agreement, including all amendments;

(iv) A statement of the grounds for appeal, with reasons why the appeal should be sustained;

(v) A statement of the specific relief desired on appeal; and

(vi) If a hearing is requested, a statement of the material facts the recipient organization believes are substantially in dispute. In the event a recipient organization fails to provide any of the information specified in paragraphs (a)(5)(i) through (v) of this section, the Committee may dismiss the appeal.

(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 must be submitted, in

writing, within 15 calendar days of receipt of the request.

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

(8) The Chairperson of the Committee, with the advice of the SBA’s Office of General Counsel (OGC), will issue a final written decision within 30 calendar days of receipt of all information or within 30 calendar days of the completion of the hearing. Copies of the decision will be provided to the recipient organization, the AA/SBDC, the Grants Management Specialist, and the SBA Project Officer.

(9) Where a recipient organization’s appeal to the Committee commences or is pending within 120 days of the end of the current budget period, the recipient organization has the right to request, in writing, that the matter be handled under an expedited appeal process. In such circumstances, the Committee, by an affirmative vote of its membership, may expedite the appeals process to attain final resolution of a dispute before the anticipated issuance date of a new cooperative agreement.

(b) *Programmatic (non-financial) disputes.* (1) The SBDC Lead Center and the SBA District Office must make every effort to resolve any disputes that arise between the SBDC network and SBA involving non-financial, programmatic issues. If the recipient organization is not satisfied with the resolution, it may, by written request to the AA/SBDC, seek reconsideration of the programmatic dispute within 30 calendar days. When a recipient organization requests reconsideration of a programmatic dispute, the appropriate Program Manager will forward a written summary of the dispute, including comments from the SBDC Lead Center Director, the SBA District Office, and all other pertinent background information to the AA/SBDC within 15 calendar days of SBA’s receipt of the request.

(2) The AA/SBDC will transmit a final, written decision to the recipient organization, the Lead Center Director, the SBA Project Officer, and the SBA District Office within 30 calendar days of the receipt of such documentation, unless the recipient organization agrees to an extension of time.

■ 32. Revise § 130.700 to read as follows:

§ 130.700 Suspension, termination, and non-renewal.

(a) *General.* After entering into a cooperative agreement with a recipient organization, the SBA may take, as it

determines appropriate, any of the following actions based upon one or more of the circumstances listed in paragraph (b) of this section.

(1) *Non-renewal.* The AA/SBDC may elect not to renew a cooperative agreement with a recipient organization at any point. In undertaking a nonrenewal action, the AA/SBDC may either choose not to accept or consider any application for renewal from the recipient organization or the Agency may choose not to exercise option years remaining under the cooperative agreement. When a cooperative agreement is not renewed, the recipient organization may continue to conduct project activities and incur allowable expenses until the end of the current budget period. If a recipient organization decides to not seek to renew its grant, it must notify the District Office and send a letter of intent to withdraw to the AA/SBDC as soon as it is feasible.

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

(ii) The notice of suspension will recommend that the recipient organization cease work on the 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 AA/SBDC decides to lift a suspension and reinstate a recipient organization's cooperative agreement, the Agency may, at its discretion, choose 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.

(b) *Cause.* The AA/SBDC may terminate, elect not to renew, or suspend a cooperative agreement with a recipient organization for cause. The 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) Disregard or material violation of regulations;

(5) Willful or material failure to comply with the terms of the cooperative agreement, including relevant OMB Circulars;

(6) Conduct of the SBDC Lead Center Director or other key personnel, reflecting a lack of business integrity or honesty, which is not properly addressed on the part of the recipient organization or sponsoring SBDC organizations;

(7) A conflict of interest on the part of the recipient organization, the SBDC service centers, the SBDC Lead Center Director, other key personnel, contractors or volunteers that causes a real or perceived detriment to a small business concern, a contractor, the SBDC network, including but not limited to, SBDC service centers, or SBA;

(8) Improper use of Federal funds;

(9) Failure of a Lead Center or its service centers to consent to audits, examinations, certification reviews, or to maintain required documents or records;

(10) Failure to implement recommendations from the audits or examinations within one year of notification of deficiencies;

(11) Failure to implement conditions from accreditation reviews within the time frame recommended by the accreditation committee and established by the AA/SBDC;

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

(13) Failure to promptly suspend or terminate the employment of an SBDC Lead Center Director, Service Center Director, or other key personnel, contractors, or volunteers upon receipt of knowledge or written information by the recipient organization and/or SBA indicating that such individual has engaged in conduct which may result or has resulted in a criminal conviction or civil judgment that would cause the public to question the SBDC's integrity. The SBDC Lead Center Director (or other appropriate official in the SBDC network), when making the decision to suspend or terminate such an employee, must consider the magnitude of the behavior, the repetitiveness of the conduct, and the remoteness in time of the behavior underlying any conviction or judgment;

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

(15) Any other action that materially and adversely affects the operation or integrity of an SBDC or the SBDC Program.

(c) *Administrative procedure for suspension, termination, and nonrenewal.* These procedures apply to termination, non-renewal, and suspension of cooperative agreements with recipient organizations.

(1) *Taking action.* When the Program Manager has reason to believe that there is cause to suspend, terminate, or non-renew a cooperative agreement with a recipient organization, either based on their own knowledge or upon information provided by other parties, the AA/SBDC may undertake an enforcement action by issuing a written notice of suspension, termination, or non-renewal to the recipient organization. The effects of such notice are addressed in paragraph (a) of this section.

(2) *Notice requirements.* Each notice of suspension, termination, or non-renewal will set forth the specific facts and reasons for the AA/SBDC'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 paragraph (d) of this section. The notice will be transmitted electronically, via email, to the recipient organization on the same date it is issued by mail.

(3) *Relationship to Government-wide suspension and debarment.* A decision by the AA/SBDC to suspend, terminate, or not renew an SBDC cooperative agreement does not constitute a non-procurement suspension or debarment of a recipient organization under Executive Order 12549, *Debarment and Suspension*, and SBA's implementation of OMB regulations at 2 CFR part 2700. However, a decision by the AA/SBDC to undertake a suspension, termination, or non-renewal enforcement action with regard to a particular SBDC 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 non-procurement opportunities.

(d) *Administrative review of suspension, termination and nonrenewal actions.* When the AA/SBDC has suspended, terminated, or elected not to renew a cooperative agreement, the recipient organization has the right to request an administrative review of the

enforcement action. Administrative review of the AA/SBDC's enforcement actions will be conducted by the Associate Administrator for Entrepreneurial Development (AA/ED).

(1) *Format.* There is no prescribed format for a request for an 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 an 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 Small Business Development Centers/Small Business Development Center Program);
- (iii) Cooperative agreement number;
- (iv) Copy of the notice of suspension, termination, or non-renewal;
- (v) Statement discussing 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 or governing regulations;
- (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 an administrative review of an SBA enforcement action must submit copies of its request (including any attachments) to:

- (i) AA/SBDC; and
- (ii) the Associate General Counsel for Procurement Law.

(3) *Timeliness.* To be considered timely, the AA/ED must receive a request for an administrative review from the recipient organization within 30 days of the date of the notice of termination, non-renewal, or suspension. Any request for administrative review received by the AA/ED more than 30 days after the date of the notice of suspension, termination, or non-renewal will be considered untimely and will be rejected without being considered.

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

(ii) [Reserved]

(4) *Standard of review.* In order to have the suspension, termination, or non-renewal of a cooperative agreement reversed on an 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 or governing regulations.

(5) *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/ED receiving a request for an administrative review, the AA/ED 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 an administrative review or after the passage of the 30-day deadline for filing such a response, the AA/ED will take one or more of the following actions, as applicable:

(i) Notify the parties whether the AA/ED has decided to grant a request for a hearing.

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

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

(iv) Within ten calendar days of declaring the record to be closed, provide all parties with a copy of the AA/ED's written decision on the merits of the administrative review.

(6) *Request for hearing.* The AA/ED 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/ED grants a request for a hearing, they will set the time and place for the hearing, determine whether the hearing will be conducted in person, via telephone or virtually,

and identify which witnesses will be permitted to give testimony.

(7) *Evidence.* The recipient organization and SBA each have the right to submit whatever evidence they believe is relevant to the matter in dispute. No form of evidence 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.

(8) *Decision.* The decision of the AA/ED will be effective immediately as of the date it is issued. The decision of the AA/ED 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/ED 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.

(i) Where an enforcement action has been reversed on administrative review, the SBA will have no more than ten calendar days to implement the AA/ED'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.

(ii) [Reserved]

■ 33. Revise § 130.800 to read as follows:

§ 130.800 Oversight of the SBDC Program.

(a) The AA/SBDC and designees will monitor the SBDC's performance and its ongoing operations under the cooperative agreement to determine if the SBDC is making effective and efficient use of program funds for the benefit of the small business community.

(b) The District Office is the primary contact for the coordination of the delivery of services to the small businesses in each area of service.

(c) The AA/SBDC may change the primary contact for coordination at any time and will notify the recipient organization of such a change in a timely manner.

■ 34. Revise § 130.810 to read as follows:

§ 130.810 SBA review authority.

(a) *Site visits.* The AA/SBDC and designees will coordinate with, and

provide written advance notice to, the SBDC Lead Center Director when conducting periodic programmatic visits to the recipient organization, Lead Center, SBDC service center organizations, and other service locations.

(1) The programmatic reviews will incorporate District Office oversight which will include conducting yearly reviews.

(2) Site visits may be incorporated into oversight and monitoring activities of the SBA program office or the SBA District Office.

(b) *SBA examinations.* The SBA designees shall perform a biennial programmatic and financial examination of each SBDC network. The purpose of these visits is to verify compliance with the cooperative agreement, analyze, assess, and evaluate performance management regarding its SBDC activities, and if necessary, make recommendations for improved service delivery. See 15 U.S.C. 648(k)(1).

(c) *Accreditation program.* (1) When extending or renewing a cooperative agreement of an SBDC, SBA shall consider the results of the examinations and accreditation reviews. See 15 U.S.C. 648(k)(3)(A).

(i) The Small Business Act provides that the Administration may provide financial support, by contract or otherwise, to the association for the purpose of developing a SBDCs accreditation program. See 15 U.S.C. 648(k)(2).

(ii) SBDC networks must be reviewed for accreditation purposes and receive accreditation periodically, as negotiated between the AA/SBDC and the accreditation committee of the recognized association.

(iii) If an SBDC does not receive accreditation, the SBA may initiate the non-renewal or termination procedure pursuant to § 130.700.

(iv) The statute at 15 U.S.C. 648(k)(3)(B) states the SBA may not renew or extend any cooperative agreement with a SBDC unless the center has been approved under the accreditation program conducted pursuant to this section, except that the AA/SBDC may waive such accreditation requirement, at their discretion, upon a showing that the center is making a good faith effort to obtain accreditation.

(2) The AA/SBDC and/or designee will participate in the deliberations of the accreditation committee.

(d) *Audits.* 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. 7501) or applicable OMB guidelines (see 2 CFR part 200, subpart

F) nor will such internal review substitute for investigations conducted by the SBA Office of Inspector General under the authority of the Inspector General Act of 1978 (Pub. L. 95-452, 92 Stat. 1101) as amended (see § 130.830).

■ 35. Revise § 130.820 to read as follows:

§ 130.820 Records and recordkeeping.

(a) *Records.* (1) The recipient organization will ensure that all financial and programmatic records, whether prepared by itself or another entity, are adequately maintained in accordance with Federal regulations in order to corroborate its performance and financial reports to the SBA, as well as to support SBA examinations or other audits. These records must include adequate documentation to support the expenditures claimed and activities performed under the cooperative agreement. The documentation should provide the means to verify proper separation of costs among various Federal awards and non-Federal spending. See also 2 CFR 200.333 through 200.337.

(2) The recipient organization will ensure complete and accurate detailed financial and programmatic documentation by all SBDC service center organizations and service centers. The recipient organization will monitor and oversee its SBDC service center organizations and SBDC service centers each budget period to ensure compliance with the OMB guidelines and regulations. See 2 CFR part 200, subpart D.

(i) The recipient organization and Lead Center will ensure that:

(A) All funds received throughout the SBDC network, both Federal and non-Federal, including program income, are properly accounted for, adequately safeguarded, accurately reported, and properly used to further program objectives.

(B) Each SBDC service center organization has reviewed all charges made to its SBDC accounts, including program income, to ensure that they are allowable.

(ii) The recipient organization's Lead Center monitoring and oversight activities must include annual on-site or virtual visits to all its SBDC service center organizations.

(A) These review procedures must ensure that SBDCs are in compliance with the terms and conditions of the cooperative agreement.

(B) The Lead Center will document the results of annual reviews of the financial and program records of its SBDC service center organizations.

(C) An in-person monitoring review must be conducted the same year that there is a change in leadership or a record of problems in that year and must be conducted not less than every 4 years.

(3) The recipient organization must keep records on the amount, source, and purpose of all funding under the overall management of the SBDC network, including Federal programs.

(b) *Availability of records.* (1) All SBDC network records must be made available to the SBA for review upon request.

(2) All SBDC network records, financial and programmatic, must be maintained for a period of three years following the date SBA accepted the annual performance report and final financial status report from the recipient organization.

(3) The recipient organization will maintain sufficiently detailed program and financial documentation to facilitate transition and provide continuous SBDC services when changes occur in SBDC service center organizations, as well as to support reviews and audits authorized by the SBA.

■ 36. Add § 130.825 to read as follows:

§ 130.825 Reports.

(a) *General.* The recipient organization will submit consolidated performance and financial reports for the SBDC network to the SBA for review. These reports will reflect actual SBDC network activity and accomplishments pertinent to the funding periods. Report formats will be specified in the annual notice of funding opportunity. See also 2 CFR 200.327 through 200.329.

(b) *Frequency.* (1) Recipient organizations that have been in the Program for more than three years must submit financial and programmatic performance reports 30 calendar days after completion of six months of operation each budget year.

(2) Recipient organizations that have been in the Program for fewer than three years must submit financial and programmatic performance reports 30 calendar days after completion of each quarter for the first three years.

(3) The final report from recipient organizations must be submitted in accordance with the notice of funding opportunity and terms and conditions.

(c) *Electronic data reports.* Lead Centers are responsible for reporting their consolidated network performance data quarterly to the SBA. The format of the reports will be designated in the notice of funding opportunity. Lead

Centers must ensure that the data is submitted to the SBA within the timeframe stipulated and that the data is accurate and complete.

(d) *Performance reports.* Performance reports must include the data specified in paragraphs (d)(1) and (2) of this section, along with any other information the SBDC feels may be relevant to a full appraisal of its performance.

(1) The quarterly and semiannual performance reports will address, in a brief narrative, the SBDC's major activities and objectives. The reports should include a discussion on the progress toward achieving those objectives.

(2) Final performance reports should include an overall summary of effort expended to deliver the core services described in the cooperative agreement for the full budget period. A discussion of performance measurements achieved and an explanation of those objectives or measurements not met should be included. Performance reports should be a summary of the activities, events or achievements by reportable category with an accompanying management analysis.

■ 37. Revise § 130.830 to read as follows:

§ 130.830 Audits and investigations.

See 2 CFR part 200, subpart F.

■ 38. Add § 130.840 to read as follows:

§ 130.840 Closeout procedures.

(a) *General.* The purpose of closeout procedures is to ensure that the program funds and property acquired or developed under the SBDC cooperative agreement are fully reconciled and transferred seamlessly between recipient organizations, SBDC service center organizations, or other Federal programs. The responsibility of conducting closeout procedures is vested with the recipient organization whose cooperative agreement is not being renewed. The procedures should be documented and accomplished in accordance with the applicable property standards and the provisions of this part.

(b) *Supplies and equipment.* Supplies and equipment acquired with funds under the cooperative agreement must be accounted for at closeout.

(c) *Intellectual property.* (1) In accordance with 2 CFR part 200, subpart D, intangible property and items subject to copyright that are purchased or developed under the cooperative agreement must be accounted for at closeout.

(2) Inventory and documentation of intellectual property must be collected

by the Lead Center for close out. In circumstances where SBA is not renewing the cooperative agreement, the recipient organization must provide an intellectual property inventory and the support documentation to the SBDC clearinghouse and to the District Office for disposition instructions.

(d) *Responsibilities—(1) Recipient organizations.* When an SBDC cooperative agreement is not being renewed, regardless of cause, the recipient organization will ensure the following steps are taken in their closeout process and perform the necessary inventories and reconciliations prior to submitting the final annual financial report.

(i) An inventory of the SBDC property must be compiled and evaluated. An asset evaluation final report accounting for the property, equipment, and the aggregate of usable supplies and materials must be provided to the Program Manager.

(ii) Program income balances must be reconciled, and unused program income transferred to the Lead Center from SBDC service center organization accounts.

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

(iv) Financial records will be compiled to facilitate an SBA closeout financial examination.

(2) *Close out actions.* Recipient organizations that terminate SBDC service center organization agreements will perform the close out actions in paragraphs (d)(1)(i) through (iv) of this section to ensure the safeguard of program resources under the cooperative agreement.

(3) *SBA.* Upon receipt of the final financial report from a non-renewing recipient organization, the AA/SBDC will issue disposition instructions to the former recipient organization as described in paragraph (e) of this section.

(e) *Final disposition.* (1) The final financial status report from the recipient organization must include the information identified in the inventory process and identify any program income collected from the SBDC network.

(2) The AA/SBDC 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 program income;

(iv) Actions to be taken regarding 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 program income or Federal or matching funds.

Isabella Casillas Guzman,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1716; Project Identifier MCAI–2022–00168–Q; Amendment 39–22577; AD 2023–21–05]

RIN 2120–AA64

Airworthiness Directives; Thales AVS France SAS Flight Management Computer Navigation Modules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Thales AVS France SAS (Thales) flight management computer navigation modules (FMC2 NAVM) installed on, but not limited to, airplanes. This AD was prompted by reports that, due to software issues, certain FMC2 NAVM navigation modules provide erroneous data to the flight management computer, compromising safe flight of the airplane. This AD requires revising the existing aircraft flight manual (AFM) for your airplane and updating the navigation database. This AD also prohibits installing a database unless certain procedures were removed. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 12, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1716; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and