

**GAO**

Report to the Chair, Committee on  
Small Business and Entrepreneurship,  
U.S. Senate

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June 2011

# SMALL BUSINESS CONTRACTING

## Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required



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Highlights of [GAO-11-418](#), a report to the Chair, Committee on Small Business and Entrepreneurship, U.S. Senate

## Why GAO Did This Study

Section 15(k) of the Small Business Act requires that all federal agencies with procurement powers establish an Office of Small and Disadvantaged Business Utilization (OSDBU) to advocate for small businesses.

Section 15(k)(3) requires that OSDBU directors be responsible only to and report directly to agency or deputy agency heads. GAO was asked to assess agencies' compliance with the reporting structure and identify the functions OSDBUs performed. GAO reviewed compliance with section 15(k)(3) at 16 agencies—the 7 agencies that each procured more than \$15 billion in goods and services in 2009 and 9 that it had previously reported were not complying with this requirement. GAO also surveyed the OSDBU directors at 25 agencies that represented more than 98 percent of civilian obligations and 90 percent of DOD obligations in 2009.

## What GAO Recommends

GAO recommends that agencies not in compliance with section 15(k)(3) take steps to comply with this statutory requirement or report to Congress on why they have not complied, including any requests for statutory reporting flexibility as appropriate. SSA agreed with the recommendation, and Interior agreed to reevaluate its reporting structure. Commerce, Justice, State, and the Treasury disagreed, believing they were in compliance. GAO maintains its position on agencies' compliance status, as discussed further in the report. Agriculture did not comment.

View [GAO-11-418](#) or key components. To view survey results, click on [GAO-11-436SP](#). For more information, contact William B. Shear at (202) 512-8678 or [shearw@gao.gov](mailto:shearw@gao.gov).

# SMALL BUSINESS CONTRACTING

## Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required

### What GAO Found

Nine of the 16 federal agencies that GAO reviewed were in compliance with section 15(k)(3) of the Small Business Act, which requires OSDBU directors to be responsible only to and report directly to the agency or deputy agency head (see table). The remaining seven agencies were not in compliance with the provision, and their OSDBU directors reported to lower-level officials or had delegated OSDBU responsibilities to officials who did not meet the reporting requirement. These agencies were not in compliance when GAO last examined them in 2003. During GAO's current review, directors who reported to agency heads cited benefits to the relationship, while those who did not had mixed views. GAO concluded that the views expressed by the directors at noncompliant agencies did not justify noncompliance and that these agencies should comply or provide support to Congress of their need, if any, for statutory flexibilities. Ongoing noncompliance with section 15(k)(3) undermines the intent of the act and may prevent some OSDBU directors from having direct access to top agency management.

#### Agency Compliance with Section 15(k)(3) of the Small Business Act

Agencies in compliance (9)	Agencies not in compliance (7)
Defense Logistics Agency <sup>a</sup>	Department of Agriculture
Department of Education	Department of Commerce
Department of Energy <sup>a</sup>	Department of Justice
Department of Health and Human Services <sup>a</sup>	Department of State
Department of the Air Force <sup>a</sup>	Department of the Interior
Department of the Army <sup>a</sup>	Department of the Treasury
Department of the Navy <sup>a</sup>	Social Security Administration (SSA)
Environmental Protection Agency	
National Aeronautics and Space Administration <sup>a</sup>	

Source: GAO analysis.

<sup>a</sup>Agencies that procured more than \$15 billion in goods and services in fiscal year 2009; together they accounted for about 76 percent of all federal contracting.

Consistent with its 2004 report, GAO's current work found that the 25 OSDBU directors surveyed focused their procurement activities on certain functions listed in section 15(k). At least 19 directors listed the five functions related to contract bundling, maintaining supervisory authority over staff, and helping small businesses obtain payments from agencies as among their duties. Fewer directors viewed the remaining three functions, such as reviewing acquisitions for small business set-asides and assisting small businesses to obtain payments from prime contractors, as duties. Directors who did not view these functions as their responsibility generally noted that contracting or program staff performed them. Whether OSDBU directors who do not perform certain functions listed in 15(k) are complying with the statute is not clear.

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**View GAO-11-418 key component**

*Small Business Contracting: Survey of 25 Agency Advocates* (GAO-11-436SP, June 2011), an E-supplement to GAO-11-418

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**Abbreviations**

DLA	Defense Logistics Agency
DOD	Department of Defense
EPA	Environmental Protection Agency
FAR	Federal Acquisition Regulation
HHS	Department of Health and Human Services
HUBZone	Historically Underutilized Business Zone
HUD	Department of Housing and Urban Development
NASA	National Aeronautics and Space Administration
OPM	Office of Personnel Management
OSDBU	Office of Small and Disadvantaged Business Utilization
PMR	program management review
SBA	Small Business Administration
SSA	Social Security Administration
USAID	U.S. Agency for International Development
VA	Department of Veterans Affairs

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United States Government Accountability Office  
Washington, DC 20548

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June 3, 2011

The Honorable Mary L. Landrieu  
Chair  
Committee on Small Business and  
Entrepreneurship  
United States Senate

Dear Madam Chair:

Maximizing contracting opportunities for small businesses has been a long-standing policy of the federal government. To help ensure that small businesses receive a share of federal procurement contract dollars, Congress has set an annual governmentwide goal of awarding not less than 23 percent of prime contract dollars to small businesses.<sup>1</sup> Congress has also mandated that the Small Business Administration (SBA) negotiate annual procurement goals with each federal agency. In fiscal year 2009, small businesses accounted for almost \$100 billion in federal contracts—about 22 percent of all federal prime contracts awarded.

To increase small businesses' visibility within federal agencies, in 1978 Congress amended the Small Business Act to require that all federal agencies with procurement powers establish an Office of Small and Disadvantaged Business Utilization (OSDBU), which would advocate for small businesses within the agencies.<sup>2</sup> The OSDBU is managed by a director who is responsible for implementing and executing the agency's functions and duties related to the award of contracts and subcontracts to small and disadvantaged businesses. Section 15(k)(3) of the act requires that OSDBU directors be responsible only to and report directly to agency heads or their deputies.<sup>3</sup> The purpose of this provision is to help ensure that OSDBU directors have direct access to their agencies' top decision makers in order to advocate effectively. Section 15(k), as amended, also

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<sup>1</sup>15 U.S.C. § 644(g). A prime contract is a contract entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

<sup>2</sup>Pub. L. No. 95-507, § 221, 92 Stat. 1757, 1770 (1978).

<sup>3</sup>Codified at 15 U.S.C. § 644(k)(3). In 1988, Congress amended section 15(k)(3) and allowed the Secretary of Defense the discretion to designate the officials to whom the Defense OSDBU director should report.

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lists a number of functions that OSDBU directors are responsible for in carrying out their roles as advocates for small businesses.<sup>4</sup>

In two earlier reports, we reviewed federal agencies' compliance with the Small Business Act and the extent to which OSDBU directors viewed the functions listed in section 15(k) as duties of their offices. In September 2003, we reported on the OSDBUs at 24 federal agencies and found that 11 of these offices did not comply with the law's requirement that the OSDBU director report directly to and be responsible only to the agency head or deputy head.<sup>5</sup> We recommended that 10 agency heads take steps, as necessary, to comply with the requirement.<sup>6</sup> However, 8 of the 10 disagreed with our recommendation.<sup>7</sup> In a follow-on March 2004 report, we noted that almost all of the 24 OSDBU directors surveyed reported that they viewed most of the functions outlined in the Small Business Act as current duties of their offices.<sup>8</sup> Most of the OSDBU directors we surveyed reported that their offices faced few challenges to carrying out their responsibilities, but some reported challenges in three areas—lack of influence in the procurement process, limited budgetary resources, and lack of adequate staff.

For this report, you asked us to review OSDBU practices for carrying out the requirements of the Small Business Act at federal agencies with major contracting activity. Specifically, we (1) assessed whether the director reported directly to the agency head or the deputy head, (2) determined the functions conducted by the OSDBUs, and (3) examined the actions taken by the OSDBUs and other officials at the various agencies to further small business contracting opportunities and the effects of funding and staff levels on these efforts.

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<sup>4</sup>Specifically, paragraphs (4)-(10) of section 15(k).

<sup>5</sup>GAO, *Small and Disadvantaged Businesses: Some Agencies' Advocates Do Not Report to the Required Management Level*, [GAO-03-863](#) (Washington, D.C.: Sept. 4, 2003).

<sup>6</sup>The remaining noncompliant agency—the Federal Emergency Management Agency—had been subsumed into the Department of Homeland Security, which had established an OSDBU with a director reporting to the highest agency levels.

<sup>7</sup>None of the legal arguments raised by the agencies caused us to revise our conclusions or recommendations.

<sup>8</sup>GAO, *Small and Disadvantaged Businesses: Most Agency Advocates View Their Roles Similarly*, [GAO-04-451](#) (Washington, D.C.: Mar. 22, 2004).

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To address these objectives, we focused our review on the seven agencies that procured more than \$15 billion in goods and services in fiscal year 2009: the Defense Logistics Agency (DLA); the Departments of the Air Force, the Army, Energy, Health and Human Services (HHS), and the Navy; and the National Aeronautics and Space Administration (NASA).<sup>9</sup> To assess whether the directors were responsible only to and reported directly to the agency head or the deputy head as required by section 15(k)(3) of the Small Business Act, we included an additional nine agencies that we reported in September 2003 were not complying with this requirement. We determined that agencies were in compliance if the designated OSDBU directors both exercised OSDBU responsibilities and reported directly to and were responsible only to the agency head or the agency head's deputy as the act requires. To determine whether OSDBU directors were in compliance with section 15(k)(3), we interviewed the designated directors to identify the official(s) they had reported to in fiscal year 2010 and asked them to provide information characterizing the reporting relationship, such as the extent to which small business issues were discussed. In addition, we reviewed documentary evidence, including organization charts and OSDBU directors' performance appraisals and position descriptions.

To determine the functions conducted by the OSDBUs, we surveyed the OSDBU directors at 25 agencies on their offices' duties and functions. The 25 agencies included all 20 civilian agencies that procured more than \$800 million in goods and services in fiscal year 2009, as well as the Department of Defense (DOD)—Office of the Secretary; the Departments of the Air Force, Army, and Navy; and DLA.<sup>10</sup> We received responses from all 25 OSDBU directors, for a response rate of 100 percent. The survey was similar to one we administered in 2003 and asked the directors about their functions in three areas: (1) participation in the agency procurement process, (2) facilitation of small business participation in agency

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<sup>9</sup>The goods and services these seven agencies procured in fiscal year 2009 accounted for about 76 percent of all federal contracting.

<sup>10</sup>The 20 civilian agencies surveyed were responsible for more than 98 percent of civilian agency obligations in fiscal year 2009. DOD does not have a single OSDBU director for the entire agency. The services (Departments of the Air Force, Army, and Navy) and other DOD command units have established separate OSDBUs, each of which is headed by a director. These organizational units carry out procurement for most of DOD. The DOD agencies, as well as some of the other agencies in our study, refer to their offices as the Office of Small Business Programs. For simplicity, we use the term OSDBU for all agencies in this report.



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contracting, and (3) interaction with SBA. The three areas covered OSDBU functions listed in the Small Business Act as well as additional functions that OSDBUs might perform. The purpose of the survey was to obtain the views of OSDBU directors on their roles and responsibilities. In addition, the survey asked the directors what challenges they faced in carrying out their responsibilities. In certain instances, we conducted follow-up interviews to clarify responses.<sup>11</sup>

To examine the actions taken by the OSDBU and other agency officials to further small business contracting opportunities and determine how funding and staff levels affected these efforts, we reviewed the survey responses from the 25 OSDBU directors. To determine actions taken by top management to further small business contracting, we reviewed documents, including policy statements, at the seven agencies with major contracting activity. We also interviewed the OSDBU directors at these agencies on the actions they and other agency officials had taken to further small business contracting; methods used by the agency and SBA to hold officials accountable for furthering small business contracting; and challenges that may have affected these efforts, such as funding and staffing levels.<sup>12</sup> Appendix I contains additional information on our scope and methodology.

We conducted our work from June 2010 to May 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The Business Opportunity Development Reform Act of 1988 amended the Small Business Act to establish an annual governmentwide goal of awarding not less than 20 percent of prime contract dollars to small businesses. The Small Business Reauthorization Act of 1997 further

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<sup>11</sup>For a complete tabulation of survey results, see GAO, *Small Business Contracting: Survey of 25 Agency Advocates* (GAO-11-436SP, June 2011), an E-supplement to [GAO-11-418](#) (Washington, D.C.: June 3, 2011).

<sup>12</sup>At the Air Force, we interviewed an official who was the acting OSDBU director while the permanent OSDBU director was on detail with another project. We also sent our survey to the acting OSDBU director.

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amended the Small Business Act to increase this goal to not less than 23 percent. To help meet this goal, SBA annually establishes prime contract goals for various categories of small businesses for each federal agency.<sup>13</sup> Although SBA is responsible for coordinating with executive branch agencies to move the federal government toward this mandated goal, agency heads are responsible for achieving the small business goals with their agencies.

A 1978 report by the Senate Select Committee on Small Business noted that officials who were responsible for advocating for small business participation in federal government procurement often did not hold positions that were high enough in the agency structure to be effective. The 1978 amendment to the Small Business Act that established section 15(k)(3) addressed this issue by establishing a direct reporting relationship between the OSDBU director and the agency head or deputy head. The statute, as amended, specifies that the director would have supervisory authority over OSDBU staff, implement and execute the functions and duties under the relevant sections of the Small Business Act, and identify proposed solicitations that involved the bundling of contract requirements. (The Small Business Reauthorization Act of 1997 defines the bundling of contract requirements as the consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern for various reasons.)

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<sup>13</sup>The small business categories include small businesses; women-owned small businesses; small disadvantaged businesses, including section 8(a) and non-section 8(a) disadvantaged businesses; Historically Underutilized Business Zone (HUBZone) small businesses; and service-disabled, veteran-owned small businesses. Created in 1997, the HUBZone program provides federal contracting assistance to small businesses in economically distressed communities with the intent of stimulating economic development in those areas. The goals for each federal agency are to award not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year to service-disabled, veteran-owned small businesses; not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year to HUBZone businesses; not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year to small disadvantaged businesses; and not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year to women-owned small businesses.

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Section 15(k) of the Small Business Act lists eight functions of OSDBU directors, as follows:

- Identifying proposed solicitations that involve significant bundling of contract requirements.
- Working with agency procurement officials to revise such proposed solicitations to increase the probability of participation by a small business.
- Facilitating the participation of small businesses as subcontractors if solicitations for bundled contracts are to be issued.
- Assisting small businesses in obtaining payments from an agency with which it has contracted.
- Helping small businesses acting as subcontractors to obtain payments from prime contractors.
- Making recommendations to contracting officers as to whether particular requirements should be set-aside for small businesses.<sup>14</sup>
- Maintaining supervisory authority over OSDBU personnel.
- Cooperating and consulting on a regular basis with SBA in carrying out OSDBU functions and duties under the Small Business Act and assigning a small business technical advisor to each office with an SBA-appointed procurement center representative. (A procurement center representative is an SBA staff member assigned to federal buying activities with major contracting programs to carry out SBA policies and programs.)

The Federal Acquisition Regulation (FAR) establishes uniform policies for acquisition of supplies and services by executive agencies. Section 19.201(d) of the FAR is the implementing regulation for section 15(k) of the Small Business Act. In addition, agencies have their own regulations for carrying out procurement activities, such as the Defense Federal

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<sup>14</sup>Under section 15(k), the OSDBU director is to make recommendations regarding whether a particular contract should be awarded to a small business under certain programs designed to promote contracting opportunities for small businesses. Later in this report, we describe this function as “determining/reviewing individual acquisitions for small business set-asides.”

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Acquisition Regulation Supplement for the Department of Defense. For the purpose of our 2003 and 2010 surveys, we divided the procurement process into four steps:

- *Acquisition planning* involves developing an overall management strategy for the procurement process for a potential contract. It takes place well in advance of a contract's award date and generally involves both a close partnership between the program and procurement offices and the involvement of other key stakeholders.
- *Solicitation development* is the process of preparing requests for vendors to submit offers, or bids.
- *Proposal evaluation* occurs after potential contractors submit proposals that outline how they will fulfill the solicitation requirements. Agency personnel evaluate proposals for award and contracting officers award the contract.
- *Monitoring*, also known as surveillance, helps to determine a contractor's progress and identify any factors that may delay performance.

To carry out the functions listed in section 15(k) of the Small Business Act, OSDBU directors provide advice on small business matters and collaborate with the small business community. Some of the primary duties of OSDBU directors include advising agency leadership on small business matters; providing direction for developing and implementing policies and initiatives to help ensure that small businesses have the opportunity to compete for and receive a fair share of agency procurement; representing the agency at meetings, workgroups, and conferences related to small business; initiating and building partnerships with the small business community; providing agency acquisition and program personnel with leadership and oversight of education and training related to small business contracting; conducting reviews of small business programs; and serving as the agency liaison to SBA, including providing annual reports on agency activities, performance, and efforts to improve performance.

OSDBU directors are not the only officials responsible for helping small businesses participate in federal procurement. At the agency level, the heads of procurement departments are responsible for implementing the small business programs at their agencies, including achieving program goals. Generally, staff within agency procurement departments who are

assigned to work on small business issues (small business specialists) coordinate with OSDBU directors on their agencies' small business programs.

## More Than Half of OSDBU Directors Reviewed Reported Only to Their Agency or Deputy Agency Head

We found that 9 of the 16 agencies we reviewed were in compliance with the Small Business Act's requirement that OSDBU directors be responsible only to and report directly to the agency or deputy agency head (see table 1).<sup>15</sup> We determined that the remaining seven agencies were not in compliance. These agencies, which use various reporting structures, also were not in compliance in 2003, when we last assessed the reporting structure. The OSDBU directors at the compliant agencies cited benefits to the reporting relationship. OSDBU directors at agencies that were not complying with section 15(k)(3) differed in their views of the importance of reporting to the agency head or deputy head.

**Table 1: Summary of Agency Compliance with Section 15(k)(3) of the Small Business Act, as of April 2011**

<b>Agencies in compliance (9)</b>	<b>Agencies not in compliance (7)</b>
Defense Logistics Agency <sup>a</sup>	Department of Agriculture
Department of Education	Department of Commerce
Department of Energy <sup>a</sup>	Department of Justice
Department of Health and Human Services <sup>a</sup>	Department of State
Department of the Air Force <sup>a</sup>	Department of the Interior
Department of the Army <sup>a</sup>	Department of the Treasury
Department of the Navy <sup>a</sup>	Social Security Administration
Environmental Protection Agency	
National Aeronautics and Space Administration <sup>a</sup>	

Source: GAO analysis.

<sup>a</sup>Agencies that procured more than \$15 billion in goods and services in fiscal year 2009.

Because all seven noncompliant agencies were also not in compliance when we reviewed them in 2003, we recommended at that time that they take steps as necessary to comply with the requirement in section 15(k)(3). Most of the agencies disagreed with our conclusion that the reporting relationships did not comply with section 15(k)(3) of the Small

<sup>15</sup>In 1988, Congress amended section 15(k)(3) and allowed the Secretary of Defense the discretion to designate the officials to whom the Defense OSDBU director should report.

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Business Act. However, none of the legal arguments that the agencies raised caused us to revise our conclusions or recommendations. For example, the Department of the Interior stated that the Assistant Secretary to whom the OSDBU director reported was the agency head for acquisition matters, in accordance with the FAR. We responded that Interior’s designation of the Assistant Secretary as its “agency head” for procurement powers did not mean that the person thereby became its agency head for purposes of section 15(k)(3). Several agencies also commented on the effectiveness of their small business programs and reporting structure. During our interviews for this report, officials generally did not state that their agencies were complying with the requirement. Rather, they commented on how their current reporting structures were working. For example, officials at five agencies stated that small business matters were not suffering as a result of the structure.

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### OSDBU Directors at Nine Agencies Reported Directly to the Agency or Deputy Agency Head

Documentation from nine agencies indicated that the OSDBU directors reported directly to and were responsible only to the agency head or the deputy head when carrying out OSDBU duties and functions. Seven of these agencies—the Departments of the Air Force, the Army, Energy, and the Navy; DLA; HHS; and NASA—procured more than \$15 billion in goods and services in fiscal year 2009. The remaining agencies, the Department of Education and the Environmental Protection Agency (EPA), procured about \$1.5 billion and \$1.8 billion, respectively, in fiscal year 2009. The organization charts for these nine agencies showed a direct link between the OSDBU directors and the agency heads or deputy heads. The agency heads or deputy heads also rated the OSDBU directors’ performance at these agencies, and OSDBU reports and memoranda were provided to them.

At NASA, the OSDBU director reported directly to the Administrator.<sup>16</sup> The organization chart showed a direct link from the OSDBU to the Office of the Administrator, and the Administrator signed the OSDBU director’s most recent performance appraisal. During our review, DLA revised the position description of the OSDBU director to make it clear that the director reported to the Vice Director and that the Vice Director would rate the director’s performance.<sup>17</sup> At the remaining seven agencies, the

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<sup>16</sup>At NASA, the Administrator is the head of the agency.

<sup>17</sup>At DLA, the Vice Director is the deputy head of the agency. A revision to the position description that clarified who would rate the director’s performance was necessary because the Chief of Staff had signed the most recent appraisal.

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OSDBU directors reported to the Deputy Secretary. For instance, at the Departments of the Air Force, Army, and Navy, the OSDBU directors reported to the Under Secretary for their respective departments, and the Under Secretary signed their performance appraisals. At Energy and HHS, the OSDBU directors reported to the Deputy Secretary, who also assessed their performance. In our 2003 report, we concluded that the Department of Education was not in compliance with section 15(k)(3). At that time, the OSDBU director did not report only to the Deputy Secretary but also reported to the Deputy Secretary's Chief of Staff. Since then, the agency has changed its reporting structure to ensure that the OSDBU director is responsible only to the Deputy Secretary. The OSDBU director stated that she now had direct access to the Deputy Secretary, meeting with him for routine discussions about small business activities and related issues. In addition, the Deputy Secretary signed her performance appraisals. We also concluded in 2003 that EPA was not in compliance because the OSDBU director was not responsible only to the Administrator or Deputy Administrator. At that time, the OSDBU director told us she reported to the Deputy Chief of Staff, who also evaluated the OSDBU director's performance. For this review, the OSDBU director told us that, while some matters were routed through the Deputy Chief of Staff, she ultimately reported to the Deputy Administrator. The Deputy Administrator signed her two most recent performance appraisals.

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### The Seven Agencies That Were Not in Compliance Had a Variety of Reporting Arrangements

As shown in table 1, seven agencies were not in compliance with section 15(k)(3). All of these agencies were also not in compliance in 2003. As in our prior report, we found that a variety of reporting structures were in place. OSDBU directors either reported to lower-level officials than the agency head or deputy or had delegated their OSDBU director responsibilities to officials who did not report to either the agency head or the deputy head. However, these arrangements do not meet the law's intent and undermine the purpose of section 15(k)(3). To help ensure that the OSDBU's responsibilities are effectively implemented, the act mandates that the OSDBU director—that is, the person actually carrying out the responsibilities—have direct access and be responsible only to the agency head or deputy. Appendix II provides details of the reporting arrangements at each agency.

### OSDBU Directors at Four Agencies Did Not Report Directly to the Agency Head or Deputy Head

At the Departments of Commerce, the Interior, and Justice and the Social Security Administration (SSA), the OSDBU directors reported to officials at lower levels than the agency head or deputy head. For example, at the Department of Commerce, the organization chart showed that the OSDBU director reported to two lower-level officials—the Deputy Assistant

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Secretary for Administration and the Assistant Secretary for Administration. At the Department of the Interior, the OSDBU director reported to the Deputy Assistant Secretary for Budget, Finance, Performance, and Acquisition and to the Assistant Secretary, Policy, Management and Budget. At the Justice Department, OSDBU officials told us that the current reporting structure was the same as in 2003. The OSDBU is located within the Justice Management Division, with the director under the supervision of the Deputy Assistant Attorney General for Policy, Management and Planning. SSA also had the same reporting structure that we documented in our 2003 report, with the OSDBU director reporting to the Deputy Commissioner, Office of Budget, Finance and Management, who is one of nine deputy commissioners managing programs and operations.

#### OSDBU Directors at Three Agencies Delegated Their OSDBU Responsibilities to Lower-Level Officials

The designated OSDBU directors at the Departments of Agriculture, State, and the Treasury delegated their responsibilities to officials who did not directly report to either the Secretaries or Deputy Secretaries. These arrangements were the same as those we determined in 2003 were not in compliance with the Small Business Act. At these agencies, an Assistant Secretary who managed the agency's administrative functions was designated as the statutory OSDBU director. The Assistant Secretaries then delegated nearly all of their OSDBU responsibilities to lower-ranking officials who reported directly to the Assistant Secretaries. The lower-ranking officials thus became the de facto OSDBU directors. At the Department of Agriculture, for example, the designated OSDBU director was the Assistant Secretary for Administration, who reported to the Secretary and Deputy Secretary. However, the Assistant Secretary had delegated nearly all of his OSDBU responsibilities to a lower-level official who did not have direct access to the agency head or deputy head. At the Department of State, the Assistant Secretary for Administration was the designated OSDBU director. The Assistant Secretary, who reported to one of the department's two Deputy Secretaries on small business matters, had delegated his OSDBU responsibilities to the Operations Director for the OSDBU, who reported directly to him. At Treasury, the Assistant Secretary of the Treasury for Management/Chief Financial Officer/Chief Performance Officer was the designated OSDBU director. However, the Director of the Office of Small Business Programs, an official who did not directly report to either the Secretary or the Deputy Secretary, was responsible for the day-to-day management of Treasury's small business programs. The Director of the Office of Small Business Programs told us she spent 100 percent of her time on small business issues.



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## While Views Varied on the Importance of Reporting Only to the Agency Head or Deputy Head, the Small Business Act Requires It

OSDBU directors' opinions varied on the importance of reporting only to the agency head or deputy head. The OSDBU directors at the nine agencies that were complying with section 15(k)(3) cited positive elements to this reporting relationship. Five of the nine OSDBU directors stated that reporting to the agency head or deputy showed top-level support for small business efforts that sent a message to the rest of the agency. For example, one OSDBU director explained that reporting directly to the agency head or deputy head helped ensure that he was viewed as equal to other senior managers. He noted that this relationship was important because it allowed him to participate in senior management meetings where decisions were made. Another OSDBU director stated that she had a strong relationship with senior management and did not hesitate to invite senior leaders to participate in small business outreach events. She added that if she did not report to the agency head or deputy, she would lose this rapport with senior leadership.

OSDBU directors at the seven agencies that were not complying with section 15(k)(3) differed on the importance of reporting to the agency head or deputy head. For example, two of these OSDBU directors thought that not reporting to the agency head or deputy was a problem. One director stated that reporting to the agency head or deputy could provide the OSDBU with more authority and enable it to collaborate more effectively with other offices. The other director noted that being too far down the reporting structure meant that she could not independently voice her opinion, especially when it differed from her supervisor's. The OSDBU directors at the other five agencies did not see problems with the existing structure, stating that small business matters were not suffering as a result of the structure. For instance, one director stated that his agency's structure worked well and that the agency's small business initiatives were resulting in high marks on the SBA scorecard and effective relationships with other agency officials.<sup>18</sup> This official noted that if he were to report directly to the Secretary or Deputy Secretary, small business efforts would compete against significant national foreign policy priorities. Another director stated that the OSDBU was getting all of the support it needed under the current reporting relationship. The director further explained that the office did not have a problem with resources and that he had a strong relationship with his supervisor. Additionally, he noted that any areas needing attention were communicated to higher

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<sup>18</sup>The SBA scorecard assigns a letter grade to agencies based on their small business performance.

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management. Yet another director stated that his agency had a successful small business procurement program. He also cited accomplishments such as meeting small business contracting goals and increasing the number of small businesses with which the agency interacted.

However, the Small Business Act requires that the OSDBU director have direct access to the agency head or deputy to help ensure that the OSDBU's responsibilities are effectively implemented. As such, the statements made by the OSDBU directors at these five agencies do not justify their noncompliance with section 15(k)(3). SBA officials said the agency had also raised concerns about compliance with the reporting requirement during its surveillance reviews of federal agencies. These reviews are evaluations of small business contracting that assess (1) management of the small business programs, (2) compliance with regulations and published policies and procedures, (3) outreach programs focusing on small businesses, and (4) procurement documentation. When SBA finds that an agency does not have the required reporting relationship, it identifies this as a deficiency in the review report. Ongoing noncompliance with section 15(k)(3) undermines the intent of the act and may prevent some OSDBU directors from having direct access to top agency management. Given how long these agencies have not been in compliance with the requirement, at a minimum they have an obligation to explain their noncompliance to Congress and provide support for their need, if any, for greater statutory flexibility in establishing a reporting structure for their OSDBU director.

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## Survey Results Showed That Most OSDBUs Continued to Focus Their Procurement Activities on Five Functions

Like the results of our 2003 survey, the responses of the 25 OSDBU directors we surveyed in 2010 indicated that they generally focused their procurement activities on the functions listed in section 15(k) of the Small Business Act. Most OSDBU directors reported they viewed five of the eight functions identified in section 15(k) as among their offices' current duties, but the extent to which the individual OSDBUs carried out each activity varied. Directors who did not view a section 15(k) function as their responsibility generally reported that contracting, acquisition, or program staff performed it. Section 15(k) lists the functions of OSDBU directors but does not necessarily require them to personally carry out these activities themselves. Few OSDBU directors viewed non-15(k) procurement activities such as developing solicitations and evaluating proposals as roles of their OSDBU.

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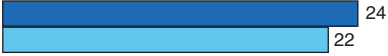











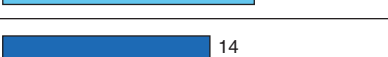



**Nearly All OSDBU  
Directors Surveyed  
Reported Their Offices  
Performed Five of the  
Eight Functions Identified  
in the Small Business Act**



For this report, we asked 25 OSDBU directors which of the responsibilities listed in the Small Business Act they saw as responsibilities of their offices. As shown in figure 1, at least 19 of the 25 OSDBU directors that we surveyed reported they viewed five of the eight functions identified in section 15(k) of the Small Business Act as current duties of their office. These five functions included (1) having supervisory authority over OSDBU staff, (2) three functions involving contract bundling (that is, the consolidation of two or more procurement requirements for goods or services previously provided under separate smaller contracts),<sup>19</sup> and (3) assisting small businesses to obtain payments from agencies. Fewer OSDBU directors (10 to 18) viewed the remaining three functions—reviewing individual acquisitions for small business set-asides, assisting small businesses to obtain payments from prime contractors, and assigning a small business technical advisor to offices with an SBA representative—as their responsibilities. The data show little change from the responses to our 2003 survey.

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<sup>19</sup>The three functions involving contract bundling are (1) attempting to identify solicitations that involve bundling of contract requirements, (2) working with agency acquisition officials to revise procurement strategies for bundled contract requirements to increase small business participation, and (3) facilitating small business participation as subcontractors to bundled contracts.

**Figure 1: Survey Results from OSDDBU Directors on Section 15(k) Functions**

Section 15(k) functions	Yes, this function is a duty of the OSDDBU director	No, this function is not a duty of the OSDDBU director	No answer
Supervisory authority over personnel with the duties and functions of the OSDDBU	 24 22	 1 <sup>a</sup> 2	
Attempting to identify solicitations that involve bundling of contract requirements	 24 21	 1 <sup>b</sup> 3	
Working with agency acquisition officials to revise procurement strategies for bundled contract requirements to increase small business participation	 24 22	 1 <sup>c</sup> 2	
Facilitating small business participation as subcontractors to bundled contracts	 20 19	 5 <sup>d</sup> 4	0 1
Assisting small businesses to obtain payments from your agency	 19 20	 6 <sup>e</sup> 4	
Determining/Reviewing individual acquisitions for small business set-asides	 18 17	 7 <sup>f</sup> 7	
Assisting small businesses to obtain payments from prime contractors	 14 17	 11 <sup>g</sup> 7	
Assigning a small business technical advisor	 10 13	 10 <sup>h</sup> 7	5 <sup>i</sup> 4

 2010 (Total respondents: 25)  
 2003 (Total respondents: 24)

Source: GAO analysis of survey data from 2010 and 2003.

<sup>a</sup>The one agency that reported that supervisory authority over personnel with the duties and functions of the OSDDBU was not a function of the OSDDBU was SSA.

<sup>b</sup>The one agency that reported that attempting to identify solicitations involving bundling of contract requirements was not a function of the OSDDBU was the Office of Personnel Management (OPM).

<sup>c</sup>The one agency that reported that working with agency acquisition officials to revise procurement strategies for bundled contract requirements to increase small business participation was not a function of the OSDDBU was SSA.

<sup>d</sup>The five agencies that reported that facilitating small business participation as subcontractors to bundled contracts was not a function of their offices were the Departments of Agriculture and Commerce, the Office of the Secretary of Defense, OPM, and SSA.

<sup>e</sup>The six agencies that reported that assisting small businesses to obtain payments from their agencies was not a function of their offices were the Departments of the Air Force, Education, and the Interior; EPA; the Office of the Secretary of Defense; and SSA.

<sup>f</sup>The seven agencies that reported that determining/reviewing individual acquisitions for small business set-asides was not a function of their offices were the Departments of the Army, Education, Energy, Housing and Urban Development (HUD), and Transportation; the Office of the Secretary of Defense; and OPM.

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<sup>9</sup>The 11 agencies that reported that assisting small businesses to obtain payments from prime contractors was not a function of their offices were the Departments of Agriculture, the Air Force, Education, the Interior, and Transportation; EPA; HUD; the Office of the Secretary of Defense; OPM; SSA; and the U.S. Agency for International Development (USAID).

<sup>10</sup>The 10 agencies that reported that assigning a small business technical advisor was not a function of their offices were the Departments of the Air Force, the Army, Commerce, Energy, the Interior, Justice, the Navy, Transportation, and Veterans Affairs and DLA.

<sup>11</sup>Section 15(k) of the Small Business Act requires the OSDBU director to designate a small business technical advisor when SBA has assigned a procurement center representative to their agency. According to the OSDBU directors at HUD, the Office of the Secretary of Defense, OPM, SSA, and USAID, SBA had not assigned a procurement center representative to their agencies at the time of our survey. As a result, the OSDBU directors of these agencies were not required to assign a small business technical advisor.

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### OSDBU Directors Varied in How Extensively They Carried Out Certain Section 15(k) Functions

We also asked OSDBU directors about the extent to which they carried out six of the eight 15(k) functions, and their responses varied.<sup>20</sup> Over half of those OSDBU directors who responded to the contract bundling questions reported that they carried out these functions to either a great or very great extent (see table 2). In contrast, six OSDBU directors reported having assisted small businesses to obtain payments from their agencies to a great or very great extent. Even fewer (two) reported having assisted small businesses to obtain payments from prime contractors to a great or very great extent.

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<sup>20</sup>For the two remaining 15(k) functions—maintaining supervisory authority over OSDBU staff and assigning a small business technical advisor—we asked only whether the OSDBU director performed the function.

**Table 2: Extent to Which 25 OSDBU Directors Surveyed Performed 15(k) Contract Bundling and Payment Assistance Functions**

Section 15(k) function	Not a role of the OSDBU	Very great extent	Great extent	Moderate extent	Some extent	Little or no extent
Attempting to identify proposed solicitations that involve bundling of contract requirements	1	9	7	2	5	1
Working with agency acquisition officials to revise procurement strategies for bundled contract requirements	1	9	5	2	4	4
Facilitating small business participation as subcontractors to bundled contracts	5	7	6	2	1	4
Assisting small businesses to obtain payments from agency	6	3	3	4	5	4
Assisting small businesses to obtain payments from prime contractors	11	1	1	2	5	5

Source: GAO analysis of 2010 survey data.

Of the 18 OSDBU directors who reported that reviewing or determining individual contracts that should be set aside for a small business was a function of their OSDBU, 13 stated they reviewed proposed small business set-asides for individual acquisitions in all or most cases. In their written comments, nine directors noted that they reviewed all acquisitions exceeding a certain amount for small business set-aside determinations. For instance, one of these directors explained that the agency had a regulation that prescribed policies, responsibilities, and procedures for clearing contracts over the simplified acquisition threshold (\$150,000) that were not set aside or reserved for small business participation, including bundled contracts.

We also asked the OSDBU directors to indicate the extent to which they cooperated and consulted with SBA in carrying out their responsibilities. Twenty-one directors reported that they cooperated and consulted with SBA to a great or very great extent. In their written comments, more than half of the directors noted they participated in SBA-sponsored activities and initiatives. For instance, 13 reported attending or sending staff to monthly SBA Small Business Procurement Advisory Council meetings.<sup>21</sup>

<sup>21</sup>The SBA Small Business Procurement Advisory Council provides OSDBU directors with a forum for exchanging information and discussing policy.

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**OSDBU Directors Reported That Agency Personnel Other Than the OSDBU Staff Often Carried Out Certain 15(k) Functions**

The number of OSDBU directors surveyed who did not view a section 15(k) function as their current responsibility varied, depending on the specific function. The number ranged from 1 who did not view maintaining supervisory authority over OSDBU personnel as a function to 11 who did not view assisting small businesses to obtain payments from prime contractors as a responsibility. In their written comments and follow-up interviews, the directors who did not view a section 15(k) function as their responsibility generally stated that contracting, acquisition, or program staff performed it. It was not clear from our survey results the extent to which OSDBU directors are involved in those functions carried out by other agency staff. Appendix III provides details on the agency personnel other than OSDBU staff who carry out certain section 15(k) functions.

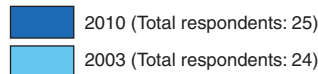
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**Few Directors Performed Procurement-related Roles Outside of Their 15(k) Functions**

In 2010, a smaller number of OSDBU directors than in 2003 viewed additional procurement activities such as developing solicitations, evaluating proposals, developing factors for evaluating solicitations, and monitoring small businesses as roles of the OSDBU (see fig. 2). For example, 3 directors reported that developing proposed solicitations was a role of the OSDBU in 2010, compared with 9 directors in 2003. The majority of the 22 directors who reported they did not carry out this function commented that their agencies' contracting offices performed this role. Of these 22 directors, 6 reported that the OSDBU played a collaborative role, such as reviewing solicitation language. Additionally, in 2010, 11 directors viewed developing evaluation factors for solicitations at their agencies as a role of the OSDBU, compared with 15 in 2003. However, of the 14 directors who said they did not perform the function in 2010, 4 reported having some involvement in the process. For example, 1 director commented that the OSDBU had provided examples of solicitation evaluation criteria for agency procurements.

**Figure 2: OSDBU Directors Reporting That Duties Other Than 15(K) Requirements Were Functions of Their Offices**

Functions	Yes, this function is a duty of the OSDBU director	No, this function is not a duty of the OSDBU director
Developing proposed solicitations		
Evaluating proposals submitted by potential contractors in response to solicitations		
Developing evaluation factors for solicitations for the agency		
Monitoring small businesses that receive prime contracts		



Source: GAO analysis of survey data from 2010 and 2003.

## OSDBUs Collaborated to Promote Small Business Contracting, but Some Directors Reported Staffing and Funding Challenges

OSDBU directors reported they collaborated with acquisition officials and conducted outreach to small businesses to promote small business contracting. For example, nearly all of the 25 OSDDBU directors we surveyed indicated they were involved in acquisition planning. At the seven agencies with major contracting activity, OSDDBU officials told us that top agency leaders also participated in outreach events and issued agency policy statements supporting small business efforts. Agencies were held accountable for fostering small business contracting through SBA’s small business goals, and SBA had initiated efforts to identify promising practices OSDDBUs can take to further small business contracting. Some OSDDBU directors we surveyed reported that inadequate staffing levels and limited budgetary resources were challenges to carrying out their responsibilities.

## OSDBU Directors Used Collaboration, Outreach, and Oversight to Facilitate Small Business Contracting

OSDBU directors use a variety of methods—including internal and external collaboration, outreach to small businesses, and oversight of agency small business contracting—to facilitate small business contracting.



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## Internal and External Collaboration

The OSDBU directors we surveyed and spoke with said that both internal and external collaboration were important to their efforts to promote small business contracting. Twenty-three of the 25 OSDBU directors surveyed viewed involvement in acquisition planning as a role or function of their OSDBUs. Of this number, 15 directors reported they carried out this function to a great or very great extent. For instance, OSDBU directors reported acquisition planning activities such as preparing annual forecasts of contracting opportunities, being a voting member of the agency's senior procurement council, participating in contracting agreement and review board meetings, and reviewing and providing feedback on draft acquisition plans.

Further, the OSDBU directors we interviewed at the seven agencies with major contracting activity all viewed relationships with acquisition staff as important in promoting small business contracting. For example, the OSDBU director at DLA told us that establishing relationships with acquisition management was the most important part of promoting small business contracting. In addition, the OSDBU director at HHS described small business contracting as a "three-legged stool," with acquisition staff, program staff, and OSDBU staff working together to support it. Four of the seven OSDBU directors stressed the importance of working with acquisition officials from the start of a project rather than trying to integrate them after a project was under way. For instance, the director at HHS stated that the OSDBU spent a great deal of time on early acquisition planning to help ensure that small businesses received consideration throughout the decision-making process. Officials at the Air Force OSDBU also stated that early involvement gave the office time to review acquisitions and discuss small business involvement. These officials noted that reviewing proposed actions late in the process placed the OSDBU in a defensive position.

Six of the seven directors we interviewed also told us they participated in acquisition teams as advocates for small business. For instance, Energy has established a monthly Advanced Planning Acquisition Team comprising OSDBU, procurement, acquisition, and SBA officials. The purpose of the team is to review proposed strategies for new and existing acquisitions to identify prime and subcontracting opportunities for small businesses. The OSDBU directors at both Army and DLA are members of acquisition review boards for contracts of more than \$500 million and \$20 million, respectively. The seven OSDBU directors we interviewed also stated that small business staff in the field, often referred to as small business specialists, reviewed proposed acquisitions for opportunities. For example, the Army OSDBU director told us that the OSDBU reviewed all

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acquisitions of more than \$500 million but that these specialists reviewed all acquisitions over \$150,000 that were not set-aside for small businesses and worked with acquisition staff to ensure that small businesses were considered.

In addition, the OSDBU directors we interviewed collaborated with other federal agencies to maximize small business contracting. All seven participate in the Federal OSDBU Directors Interagency Council, an informal organization that meets to exchange information on initiatives and processes related to small businesses and outreach events that promote small business contracting.<sup>22</sup> Among other things, the council seeks to identify best practices and share ideas and experiences among federal agencies and private industry to help leverage resources and develop solutions for promoting small business involvement.

## Outreach Efforts to Small Businesses

Nearly all of the OSDBU directors we surveyed saw outreach activities to small businesses as a function of their offices. For instance, 23 of the 25 OSDBU directors viewed hosting conferences for small businesses as one of their responsibilities, and 23 had hosted such an event in the last 2 years. More specifically, these 23 agencies had hosted an average of 20 conferences in the past 24 months. For instance, one OSDBU director reported the agency had sponsored conferences of varying sizes to address contractual requirements that program offices noticed or forecasted. The same director noted the conferences were typically conducted in a networking or “business fair” format, allowing vendors to engage program and contracting officials. In addition, most of the OSDBU directors surveyed (20 of 25) saw sponsoring training programs for small businesses as one of their responsibilities, and 18 had hosted such an event in the last 2 years. For example, OSDBU directors described sponsoring trainings for small businesses in specific socioeconomic groups, providing one-on-one trainings, and offering workshops focused on specific skills such as writing proposals and teaming with larger businesses.

The seven OSDBU directors we interviewed provided examples of outreach to the small business community. For example, the OSDBU director at DLA said the OSDBU worked closely with the American Legion to promote contracting to small businesses owned by service-disabled veterans. According to the NASA OSDBU director, small business staff held over 100 outreach events in fiscal year 2010. Other OSDBU officials

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<sup>22</sup>See [www.osdbu.gov](http://www.osdbu.gov).

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## Oversight of Agency Small Business Contracting

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described their efforts to disseminate information to small businesses through Web sites. For instance, Navy's OSDBU director stated the agency was working to standardize the Web site formats used by its various units for outreach to small businesses. He explained that OSDBU staff had reviewed the Web sites to determine whether a small business could access information easily, and found retrieving information on small businesses difficult because each of the sites was set up differently. The Air Force maintains a small business Web site that provides small businesses with information on the agency's contracting opportunities.<sup>23</sup> An OSDBU official stated the site was comprehensive and included the contact information for small business staff, long-range acquisition data, information on various outreach efforts, links to the Air Force's quarterly newsletter, and articles on small business issues.

OSDBUs also provide oversight of agencies' small business contracting. The FAR requires annual assessments of the extent to which small businesses are receiving a fair share of federal procurements.<sup>24</sup> We found that these assessments varied across the seven agencies we interviewed. For example, the OSDBU at Energy conducts quarterly reviews of program offices. Offices are rated using a color-coded system—green for reaching 95 percent of small business goals and yellow or red for lower percentages. The NASA OSDBU produces monthly reports on the agency's individual space and research centers' progress in meeting small business goals and collects data on the centers' outreach and training efforts.<sup>25</sup> The OSDBU follows up with individual centers that do not meet their goals. At Army, the OSDBU director tracks agency performance using Federal Procurement Data System—Next Generation data. She noted that if the data indicated decreases in small business contracting from prior-year trends, agency leadership would be informed.

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<sup>23</sup>See <http://www.AirForceSmallBiz.org>.

<sup>24</sup>These annual reviews also are required to assess the adequacy of contract bundling documentation and justification, and actions taken to mitigate the effects of necessary and justified contract bundling on small businesses. FAR § 19.201(d)(11). Copies of these assessments are to be provided to the agency head and SBA Administrator. FAR § 19.201(d)(12). According to SBA officials, agencies do submit these contract bundling reports to them. They also told us that agencies provide information on contract bundling as part of the SBA scorecard.

<sup>25</sup>The NASA OSDBU tracks the performance of the agency's 11 space and research centers, including the Kennedy Space Center. Each center has procurement authority and conducts outreach to small businesses.

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All seven agencies we interviewed also conducted program management reviews (PMR) or similar reviews to help ensure that small businesses were being considered for contracts and internal controls for ongoing contracts followed. During PMRs, officials review a sample of existing contracts to determine whether proper procedures and internal controls, including those related to small business, have been followed. The OSDBU directors at four agencies (Army, DLA, HHS, and NASA) reported that OSDBU and acquisition officials jointly conducted these reviews. At the Air Force, small business staff in field offices conducted the PMRs, and at Energy, procurement staff conducted them. The Navy OSDBU had replaced PMRs with procurement performance management assessments, which review contracting offices and commands on 11 categories, including involvement of small business in acquisition planning and procurement planning, marketing strategies and approaches, number of set-asides, and inclusion of small business clauses in all contracts.

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### Top Agency Officials Generally Provided Support for Small Business Efforts

OSDBU officials at the seven agencies we contacted told us that top agency leaders supported small business contracting by participating in outreach events and issuing policy statements. For instance, these OSDBU directors cited the following examples of their agency heads' participation in outreach events:

- The DLA Director took part in public forums such as conferences and emphasized small business contracting when interviewed for a magazine article.
- The NASA Administrator attended the agency's second annual small business symposium and award ceremony to personally recognize the achievements of small businesses, while the Deputy Administrator handed out awards.
- In fiscal year 2010, top Army management attended five major outreach events, including the National Veterans Conference, an event that the OSDBU had hosted for 6 years.

Top management also promoted small business contracting by issuing agency policy statements or memos. For instance:

- The Secretary of the Air Force issued a joint memo with the Chief of Staff in January 2009 that encouraged officials to "aggressively seek" small businesses owned by service-disabled veterans for Air Force contracts and encouraged using the OSDBU to help identify strategies and capable firms.

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- The Secretary of Energy issued a memo in November 2009 asking all program offices to work with the OSDDBU to promote prime contracting, subcontracting, and financial assistance opportunities for small businesses, including small disadvantaged, Historically Underutilized Business Zone (HUBZone), 8(a), women-owned, and service-disabled veteran-owned small businesses.
  - In June 2009, the Secretary of the Navy issued a memo establishing the Department of the Navy Small Business Award to recognize individuals and teams who have made outstanding contributions in promoting competition and innovation in the Navy acquisition process.
  - The Deputy Secretary at HHS issued a memo in January 2009, which stated that component heads were expected to provide their full support to the small business program at every juncture within the acquisition process.

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### SBA's Small Business Goals and Performance Standards Held Agencies and Staff Accountable for Furthering Small Business Contracting

Agencies as a whole are held accountable for furthering small business contracting through SBA's small business goaling program and scorecard. SBA produces an annual "goaling" report showing the percentage of contracting dollars awarded to small businesses. SBA's goaling report for fiscal year 2009 shows that 22 percent of eligible contract dollars governmentwide were awarded to small businesses, an amount that was just short of the statutory requirement of 23 percent. As shown in table 3, the percentage awarded to small businesses by the agencies we surveyed ranged from 6 percent to 56 percent of eligible contract dollars.<sup>26</sup>

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<sup>26</sup>The fiscal year 2009 goaling report was the most recent report available at the time of our review.

**Table 3: Small Business Contracting at Agencies Surveyed by GAO, Fiscal Year 2009**

Agency surveyed	Total small business eligible dollars <sup>b</sup> (millions)	Small business dollars (millions)	Small business goal <sup>c</sup>	Percentage of eligible dollars awarded to small businesses
Agriculture	\$5,321	\$2,803	49.9%	52.7%
Commerce	3,341	1,222	46.7	36.6
DOD <sup>a</sup>	302,377	63,894	22.2	21.1
Education	1,485	244	12.8	16.4
Energy	30,991	1,959	5.9	6.3
EPA	2,007	950	39.8	47.3
General Services Administration	7,399	2,001	35.7	27.0
HHS	18,797	3,204	19.0	17.0
Homeland Security	14,440	4,676	31.9	32.4
Housing and Urban Development	874	434	66.3	49.7
Interior	2,924	1,644	55.5	56.2
Justice	7,674	1,883	36.8	24.5
Labor	1,956	718	33.4	36.7
NASA	14,640	2,208	15.4	15.1
Office of Personnel Management	1,605	224	28.9	14.0
SSA	1,241	403	32.5	32.5
State	3,003	1,019	37.0	33.9
Transportation	1,929	751	37.0	38.9
Treasury	2,157	576	29.4	26.7
U.S. Agency for International Development	1,059	109	19.6	8.7
Veterans Affairs	\$14,545	\$5,082	28.7%	34.9%

Source: SBA's 2009 Goaling Report and Scorecards.

<sup>a</sup>DOD and its component agencies (Air Force, Army, DLA, and Navy) are assessed as one unit by the SBA goaling program.

<sup>b</sup>Small business eligible dollars are the total dollars obligated for contracts minus certain exclusions such as contracts performed outside the U.S., foreign military sales, and leases.

<sup>c</sup>The small business goal that SBA sets for each agency varies and is the percentage of total small business eligible dollars to be awarded to small businesses.

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SBA sets annual goals for small business contracting at each agency, basing these goals on the agencies' past performance, total spending, and purchases of goods and services from small businesses. These goals are set for the agency as a whole, not just for the OSDDBU. As we reported in 2009, OSDDBU officials at some agencies reported challenges with the goal-setting process, including limitations in negotiating and appealing their goals.<sup>27</sup> At that time, agencies told GAO the goal-setting process was not a negotiation and that SBA did not factor in changes to agencies' contracting priorities in setting the goals. Two of the seven agencies that we interviewed (Energy and HHS) said that meeting small business goals was difficult because the goods and services the agency purchased were not well suited for small business contracts. For example, 85 percent of Energy's contracts are facility management contracts that have traditionally been awarded to large businesses and universities to manage operations at sites such as Los Alamos National Laboratory. According to SBA officials, the agency has revised the goal-setting process to make it more collaborative.

SBA also assessed all of the agencies we surveyed using its annual small business scorecard to ensure greater accountability. According to SBA, the scorecard fulfills its statutory requirement to report to the President and Congress on achievements by federal agencies against their annual goals.<sup>28</sup> The SBA scorecard evaluates factors such as goals met, progress shown, agency small business strategies, and top-level commitment to meeting goals for 24 agencies and offices and the government as a whole. In fiscal year 2009, SBA updated the scorecard and now assigns a letter grade to each agency. Eighty percent of an agency's grade is based on its progress in meeting its prime contracting goal, 10 percent on its progress in meeting its subcontracting goal, and 10 percent on a performance rating assigned to the agency by a panel of OSDDBU directors. The agencies submit reports on small business achievements that the panel uses to determine performance ratings.<sup>29</sup> The scorecard does not specifically consider the

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<sup>27</sup>See GAO, *Small Business Administration: Agency Should Assess Resources Devoted to Contracting and Improve Several Processes in the 8(a) Program*, [GAO-09-16](#) (Washington, D.C.: Nov. 21, 2009).

<sup>28</sup>15 U.S.C. 644(h).

<sup>29</sup>The reports focus on nine elements related to small business contracting, including agency strategy, top-level commitment, outreach, data reliability, compliance with policies and procedures, internal training, and collaboration with SBA.

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performance of the OSDBU or its director, although the OSDBU director may be involved in some of the activities evaluated.

All seven of the OSDBU directors we interviewed are held accountable for promoting small business contracting primarily through internal performance standards and appraisals. Performance standards identify goals and set objectives that are used as key indicators of achievement during annual or midpoint performance appraisals. For example, the NASA OSDBU director explained that, as part of his performance appraisal process, he was reviewed against measurable and achievable goals. These included developing a small business improvement plan for the agency with specific initiatives to meet its small business goals and implementing a training course for agency staff on a standard method to evaluate proposals submitted to the agency.

To help OSDBUs improve their capabilities, SBA and others have initiated efforts to identify promising practices that OSDBUs can use to facilitate small business contracting. A White House Interagency Task Force on Federal Contracting Opportunities for Small Businesses, which was established April 2010, identified the need for best practices. The task force issued a report that identified challenges to small businesses such as inadequate training for agency staff.<sup>30</sup> Among other things, it recommended that the executive branch facilitate the identification and rapid adoption of successful practices for increasing opportunities for small businesses. To implement this recommendation, the task force suggested that SBA (1) develop a Web site to share best practices and (2) organize an event for OSDBUs to present best practices for ensuring greater small business participation and catalog and publicize the results. According to SBA officials, they have taken steps to plan these efforts. SBA had already begun to highlight on its Web site best practices for making opportunities available to small businesses and has identified three to date.<sup>31</sup> In addition,

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<sup>30</sup>Interagency Task Force on Federal Contracting Opportunities for Small Businesses, *Report on Small Business Federal Contracting Opportunities*.

<sup>31</sup>The three best practices highlighted were (1) the Department of Agriculture's women-owned small business program; (2) the Department of Homeland Security's efforts to promote opportunities for service-disabled veteran-owned and HUBZone small businesses; and (3) the Department of Veterans Affairs' (VA) efforts to promote veterans in business through collaborative partnerships between VA's Center for Veterans Enterprise, veteran-owned small businesses, and other federal agencies. For more information, see <http://www.sba.gov/content/recognizing-best-practices-increasing-federal-opportunities-small-businesses-0> (accessed on Mar. 22, 2011).



during the scorecard process, the panel of OSDBU directors identified best practices at 12 agencies, although these have not been published with this list on SBA's Web site. The Federal OSDBU Directors Interagency Council also seeks to identify best practices and has identified some that focus on interactions between OSDBUs and small businesses.<sup>32</sup>

### Survey Respondents Identified Staffing, Funding, and Influence in the Procurement Process as Challenges

Most of the 25 OSDBU directors surveyed indicated that inadequate staffing levels and limited budgetary resources were challenges to carrying out their responsibilities to at least some extent (see table 4). These issues were also reported as challenges in 2003. Twenty agencies reported that inadequate staffing levels were a challenge to at least some extent in 2010, compared with 17 agencies in 2003. Seventeen agencies reported that limited budgetary resources were a challenge to at least some extent in 2010 and in 2003.

**Table 4: Challenges Reported by OSDBU Directors in Carrying Out Their Responsibilities**

	Year of survey	Very great extent	Great extent	Moderate extent	Some extent	Little or no extent	No answer
Inadequate staffing levels	2010	4	2	8	6	5	0
	2003	1	4	5	7	6	1
Limited budgetary resources	2010	6	1	5	5	8	0
	2003	2	3	3	9	6	1
Lack of influence in the procurement process	2010	1	2	3	6	13	0
	2003	2	2	3	6	10	1

Source: GAO analysis of survey data from 2010 and 2003.

Six agencies reported that inadequate staffing levels were a challenge to a great or very great extent, and seven agencies reported that limited budgetary resources were a challenge to a great or very great extent. In a follow-up interview, OSDBU officials at one agency explained that while they were able to perform their mission, inadequate staffing levels had resulted in increased staff workloads, longer work days, and the need to cross-train staff. They noted that in addition to the functions listed in 15(k) of the Small Business Act, they were also responsible for reviewing grant

<sup>32</sup>See Federal OSDBU Directors Interagency Council, *Model Code of Expectations Between Federal OSDBUs and Small Businesses*, August 2003. This document identifies the expectations that both small businesses and OSDBUs should have when small businesses pursue federal procurement opportunities.

programs for small business opportunities. The OSDBU director at another agency indicated that because she had only one staff person, her office was unable to review the majority of procurement actions, including those involving contract bundling. She also noted that limited budgetary resources restricted the hiring of additional staff. Additionally, in follow-up interviews, four OSDBU directors noted that limited budgetary resources hindered their efforts to reach out to small businesses.

Almost half of the OSDBU directors surveyed also reported that their lack of influence in the procurement process was a challenge to carrying out their responsibilities to at least some extent. Three agencies indicated that this issue represented a challenge to a great or very great extent. In a follow-up interview, OSDBU officials at one agency told us that better coordination was needed between the OSDBU and acquisition officials on issues related to small businesses. While the OSDBU participated in acquisition planning, the officials noted that their role in acquisition decisions was not clear. Another OSDBU director stated that as part of the acquisition approval process, he could disagree with a contract recommendation. However, the director noted that his decision could also be appealed and overruled by an acquisition executive, thus limiting the OSDBU's influence.

At the seven agencies with major contracting activity, trends in staffing and funding levels varied over the past 5 years. From fiscal year 2006 to 2010, OSDBU staffing generally decreased at Energy, increased slightly at DLA, the Navy, and NASA, and stayed the same at the Army and HHS (see table 5). At the Air Force, staffing fluctuated in the interim, but was the same in fiscal year 2010 as it was in fiscal year 2006.

**Table 5: OSDBU Full-Time Equivalent Staff, Fiscal Years 2006 to 2010**

Agency	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Air Force	13	12	17	18	13
Army	9	9	9	9	9
DLA	7.5	7.5	8	8	10
Energy	9	9	9	6	6
HHS	17	17	17	17	17
NASA	4	5.6	4.83	5.38	5.14
Navy	5	6	6	6	7

Source: Agency documents and officials.

Note: The partial numbers for NASA are due to changes in the number of staff throughout the year.

Additionally, from fiscal year 2006 to 2010 OSDBU funding generally decreased at the Air Force, the Army, and Energy and increased at DLA, HHS, the Navy, and NASA (see table 6).

**Table 6: OSDBU Budgets, Fiscal Years 2006 to 2010**

Agency	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Air Force	\$2,525,000	\$1,931,000	\$2,791,000	\$3,947,000	\$1,462,000
Army	2,156,000	2,119,000	2,081,000	2,111,000	1,868,000
DLA	876,997	848,414	899,855	1,096,264	1,157,593
Energy	1,333,866	1,192,886	1,059,928	964,454	789,828
HHS	2,644,000	2,628,000	2,660,000	2,690,000	2,690,000
NASA	1,168,196	1,527,274	1,548,217	1,796,166	1,838,817
Navy	\$519,000	\$665,000	\$898,000	\$971,000	\$1,619,000

Source: Agency documents and officials.

Note: The purpose of this table is to show trends at each agency over the past 5 years, not to compare OSDBU budgets across agencies. In general, the budget data include funding for general office operations and personnel. For Air Force and Army, these data are their maintenance and operations budgets, which include only civilian salaries.

The OSDBU directors at the seven agencies we interviewed noted a relationship between changes in staffing and funding levels. For example, recent decreases in the Air Force and Energy ODSBU budgets were due to decreases in staffing. Air Force officials told us that the OSDBU had streamlined operations by eliminating some redundant contractor positions and converting some contractors into civilian positions. They noted that these changes had resulted in greater efficiencies and increased quality. Energy officials stated that since the change in administrations in 2008, three political appointees working at the Energy ODSBU had left, halving the number of staff responsible for the same workload. However, they noted that hiring interns and contractors had mitigated staffing constraints and the agency anticipated hiring additional OSDBU staff in the future. Recent increases in the ODSBU funding for Navy and DLA had resulted in increases in staffing. The Navy ODSBU director explained that in addition to funding training and outreach programs, the recent increases in funding were used to create an OSDBU industry analyst position, and two additional positions were being developed. The DLA OSDBU director noted that recent budget increases provided for an increase in staffing but funding for other expenses such as travel had not increased, causing her to have to turn down speaking and outreach events due to lack of funds.

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Six of the seven OSDBU directors we interviewed told us they would increase the breadth of the activities they currently performed if more resources were available.<sup>33</sup> For example, the OSDBU directors at the Army and Air Force stated they would increase their outreach activities. Additionally, a few OSDBU directors noted that if more resources were available, they would perform additional analysis and offer more training. For example, the DLA OSDBU director stated she would analyze DLA commodity purchases and research trends, assist with more market research, provide more training to small business and other staff, and fill skill gaps within the office. With additional resources, the HHS OSDBU director stated she would increase internal training opportunities for acquisition program staff and provide online training for small businesses.

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## Conclusions

Section 15(k)(3) of the Small Business Act seeks to help ensure that small business advocates within federal agencies have direct access to the highest levels of the agency. However, 7 of the 16 federal agencies that we reviewed were not in compliance with the act. Moreover, all of the agencies that are currently not in compliance were not in compliance in 2003 and have maintained the same or a similar reporting structure, even though at the time we recommended changing them. The OSDBU directors at the nine agencies that were in compliance with section 15(k)(3) cited positive benefits to the reporting relationship, while the OSDBU directors at the seven noncompliant agencies differed on the importance of reporting to the agency head or deputy head. Two thought that not reporting to the agency head or deputy head was a problem, while the other five asserted that the lack of a direct reporting relationship with the agency head had not adversely affected their efforts to advocate for small business contracting. However, we did not find that these arguments justified noncompliance with section 15(k)(3). Continued noncompliance with the requirement undermines the intent of the provision. If the agencies believe their reporting structures are sufficient to ensure that small business contracting receives attention from top management at federal agencies, at a minimum they have the obligation to explain their noncompliance to Congress and provide support for their views, including requesting any statutory flexibilities to permit exceptions as appropriate. One potential mechanism for making this information available to Congress would be through SBA's annual scorecard process. The

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<sup>33</sup>The remaining OSDBU director (Navy) told us that he currently does not need more resources and his office is working to be a good steward of its current resources.

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noncompliant agencies could include their rationale for their reporting structure in the annual reports that they submit to SBA, and SBA could include such information in its scorecard report to Congress.

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## Recommendation for Executive Action

Given the ongoing requirement in the Small Business Act that OSDBU directors report to agency heads or deputy heads, we recommend that the heads of the Departments of Agriculture, Commerce, the Interior, Justice, State, and the Treasury and the Social Security Administration take steps as necessary to comply with the requirement or report to Congress on why they have not complied. Such information could be included in SBA's annual scorecard report to Congress. Moreover, agencies that have not complied with the requirement could seek any statutory flexibilities or exceptions they believe may be appropriate.

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## Agency Comments and Our Evaluation

We sent a draft of this report to 26 agencies for their review and comment. Of the nine agencies that we concluded were complying with section 15(k)(3) of the Small Business Act, only the Department of Education provided written comments. In those comments, the agency noted that since our 2003 report it had taken definitive corrective steps to achieve and remain in compliance with all applicable requirements and stated that it was pleased with our recognition of its changes to the reporting structure. (See appendix IV for Education's written comments.) None of the remaining eight agencies found to be in compliance with section 15(k)(3)—the Departments of the Air Force, the Army, Energy, and the Navy; DLA; EPA; HHS; and NASA—provided any comments on the draft report.<sup>34</sup>

Of the seven agencies that we concluded were not complying with section 15(k)(3), the Departments of Commerce, the Interior, Justice, State, and the Treasury and SSA provided written comments. These written comments are reproduced in appendixes V through X. The Department of Agriculture did not comment on the draft report. Of the six agencies that provided written comments, the Departments of Commerce, Justice, State, and the Treasury disagreed with our conclusion that their reporting relationships did not comply with section 15(k)(3) of the Small Business Act. The Social Security Administration agreed to revise its reporting structure, while the Department of the Interior stated it planned to

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<sup>34</sup>The Office of the Secretary of Defense responded on behalf of the Air Force, Army, DLA, and Navy.

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evaluate our recommendation and options to resolve the issue. None of the agencies' comments caused us to revise our conclusions or recommendations. The six agencies' specific comments and our responses are summarized below.

- The Department of Commerce stated that the agency was in compliance with section 15(k)(3) because the OSDBU director reported directly to the Deputy Secretary on all legislative and policy issues and to the Chief Financial Officer and Assistant Secretary for Administration on administrative matters such as personnel and budget. The comment letter also cited the agency's small business achievements, such as exceeding small business goals. As noted in the draft report, the OSDBU director stated that she reported to the Deputy Assistant Secretary for Administration for all small business matters and to the Assistant Secretary for Administration for administrative matters such as budget and personnel. Agency documents, such as the organization chart and the OSDBU director's two most recent performance appraisals, confirmed this reporting relationship. Further, the OSDBU director stated she had never met the Secretary or previous Deputy Secretary. She met the new Acting Deputy Secretary in December 2010, but did not have a reporting relationship with her. Therefore, we did not revise our conclusion or recommendation.
- The Department of the Interior stated that it did not have comments on the draft report, but would be evaluating our recommendation and options to resolve the issue. The letter also indicated that the agency would report back to GAO once it had finalized its plans.
- The Department of Justice agreed that its OSDBU was located within the Justice Management Division. However, its comment letter stated that this arrangement was in place for administrative purposes, and that the OSDBU director reported directly to the Deputy Attorney General on matters of substance. The letter stated that through this organizational structure, the Deputy Attorney General ensured that small businesses were provided the maximum practicable opportunity to participate in contracting opportunities throughout the agency. The letter also commented that the current placement of the OSDBU allowed for the efficient management and implementation of the small business contracting programs that were vital to the agency in satisfying its mission. As we noted in the draft report, agency documentation such as the OSDBU director's position description and performance appraisals indicated that the director reported to the Deputy Assistant Attorney General for Policy, Management and Planning. Further, the OSDBU director told us during

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our review that he had never met the Deputy Attorney General. Therefore, we did not revise our conclusion or recommendation.

- The Department of State disagreed with the report's conclusions. The letter pointed out that the Assistant Secretary of State for Administration, who is the designated OSDBU director, reports to the Deputy Secretary concerning small business activities. This information was included in the draft report. However, we concluded that the agency was not in compliance with section 15(k)(3) because the Assistant Secretary had delegated his OSDBU responsibilities to a lower-level official who did not report to the Secretary or Deputy Secretary. Regarding this conclusion, State commented that section 15(k)(3) permitted the delegation of functions from the Assistant Secretary to the OSDBU Operations Director and stated that while OSDBU directors were responsible for implementing and executing the specific functions and duties assigned under sections 8 and 15 of the Small Business Act, section 15(k)(3) contained no requirement that the director personally perform any specific functions. The letter further commented that executive branch authority was typically exercised through delegation, with an agency's basic authority being vested in the agency head and subsequently redelegated. It cited the case of *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 121 (1947) as an example in which the authority to redelegate is implied. However, as we stated in our 2003 report, the *Fleming* case recognizes that the delegation of authority may be withheld by implication, and we believe section 15(k)(3) does exactly that.<sup>35</sup> As explained in this report, to ensure that the OSDBU responsibilities are effectively implemented, the statute mandates that the OSDBU director (i.e., the person carrying out the responsibilities) have immediate access and be responsible only to the agency head or deputy. The legislative history reveals that the reason for this requirement is that Congress believed that agency officials responsible for promoting procurements for small and disadvantaged businesses were often too far down the chain of command to be effective. The reporting requirement of section 15(k)(3) was intended to remedy this situation. The Department of State's letter also highlighted its small and disadvantaged business goal achievements and commented that reorganizing the OSDBU so that its Operations Director reported directly to the Secretary or her Deputy would decrease efficiency. The letter concluded by stating that the OSDBU Operations Director currently had direct access whenever necessary to decision makers in the Department programs that utilize small and disadvantaged businesses. As indicated in the recommendation,

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<sup>35</sup> [GAO-03-863](#).

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agencies that believe that they should have greater flexibility should pursue this with Congress.

- The Department of the Treasury disagreed with the report’s conclusion and commented that the statute did not require that the OSDBU director be an official assigned to small business issues full time. The letter stated that the Assistant Secretary for Management, in the capacity of OSDBU director, had a direct reporting relationship to the Deputy Secretary of the Treasury and provided oversight and direction to the Office of Small Business Programs as well as to bureau heads and their procurement officials in executing the agency’s responsibilities under the Small Business Act. The letter noted that the Assistant Secretary exerted considerable influence over acquisition and budget officials at all levels in regards to attaining small business goals. Finally, the letter commented that the OSDBU director assigning day-to-day operations pertaining to small business functions to subordinate officials did not establish any such other officials as the “de facto OSDBU director.” As previously discussed, we believe that section 15(k)(3) includes an implied prohibition against delegating the OSDBU director’s authority. As a result, we did not revise our conclusion or recommendation.
- The Social Security Administration’s letter did not provide comments on the draft report but indicated that the agency had reevaluated the reporting relationship in light of our draft. The letter stated that in the future the OSDBU director would be reporting to the Deputy Commissioner, the deputy agency head for SSA.

Of the remaining 10 agencies that received a copy of the draft report, 9 agencies—the Departments of Homeland Security, Housing and Urban Development, Labor, Transportation, and Veterans Affairs; the General Services Administration; the Office of the Secretary of Defense; the Office of Personnel Management; and the U.S. Agency for International Development—did not provide any comments on the report.<sup>36</sup> The Small Business Administration provided technical comments, which have been incorporated as appropriate.

We also provided a copy of our survey results, which will be published in a separate product ([GAO-11-436SP](#)), to the 25 agencies we surveyed and SBA for their review and comment. Only one agency had a comment. The

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<sup>36</sup>Our work at these agencies was limited to asking the OSDBU director to fill out our survey.



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Department of State provided a comment via email stating that the survey questions focused on the daily duties of the OSDBU, but did not provide an opportunity to explain the delegation of these duties to the OSDBU Operations Director. We note that while the survey was designed to capture the OSDBU director's activities (and not the delegation of such duties per se), there were numerous open-ended questions that allowed respondents to add explanations or qualifications to their responses. State also had the opportunity to explain the delegation of duties during our interviews with OSDBU officials.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Ranking Member of the Senate Committee on Small Business and Entrepreneurship, the Chairman and Ranking Member of the House Committee on Small Business, and other interested congressional committees. The report will also be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your office have any questions about this report, please contact me at (202) 512-8678 or [shearw@gao.gov](mailto:shearw@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix XI.

Sincerely yours,



William B. Shear  
Director, Financial Markets and  
Community Investment

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# Appendix I: Scope and Methodology

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We reviewed Office of Small and Disadvantaged Business Utilization (OSDBU) practices for carrying out the requirements of the Small Business Act at federal agencies with major contracting activity. Specifically, we (1) assessed whether the director reported directly to the agency head or the deputy head; (2) determined the functions conducted by the OSDBUs; and (3) examined the actions taken by the OSDBUs and other officials at the various agencies to further small business contracting opportunities and the effects of funding and staff levels on these efforts.

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## Identification of Federal Agencies with Major Contracting Activity

To determine which federal agencies engage in major contracting activity, we reviewed fiscal year 2009 data from the Federal Procurement Data System-Next Generation. (These were the most recent data available at the time of our review.) This dataset includes information on 20 defense agencies and 62 civilian agencies.<sup>1</sup> Using these data, we determined that seven agencies each procured more than \$15 billion in goods and services in fiscal year 2009.<sup>2</sup> Table 7 shows the seven agencies with major contracting activity as well as the other agencies covered in our review.

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<sup>1</sup>We analyzed the Federal Procurement Data System-Next Generation data for each component within the Department of Defense (DOD) because it does not have a single OSDBU director for the entire agency. The Departments of the Air Force, Army, and Navy and other DOD components have established separate OSDBUs, each of which is headed by a director. These organizational units carry out procurement for most of DOD.

<sup>2</sup>The goods and services these seven agencies procured in fiscal year 2009 accounted for about 76 percent of all federal contracting.

**Table 7: 25 Federal Agencies at Which GAO Conducted Work**

<b>Agency</b>	<b>Agency with major contracting activity<sup>a</sup></b>	<b>Agency assessed for compliance with section 15(k)(3) of Small Business Act</b>	<b>Agency surveyed</b>
Defense Logistics Agency	X	X	X
Department of Agriculture		X	X
Department of Commerce		X	X
Department of Defense—Office of the Secretary			X
Department of Education		X	X
Department of Energy	X	X	X
Department of Health and Human Services	X	X	X
Department of Homeland Security			X
Department of Housing and Urban Development			X
Department of Justice		X	X
Department of Labor			X
Department of State		X	X
Department of the Air Force	X	X	X
Department of the Army	X	X	X
Department of the Interior		X	X
Department of the Navy	X	X	X
Department of the Treasury		X	X
Department of Transportation			X
Department of Veterans Affairs			X
Environmental Protection Agency		X	X
General Services Administration			X
National Aeronautics and Space Administration	X	X	X
Office of Personnel Management			X
Social Security Administration		X	X
U.S. Agency for International Development			X
<b>Total</b>	<b>7</b>	<b>16</b>	<b>25</b>

Source: GAO.

<sup>a</sup>The seven agencies with major contracting activity each procured more than \$15 billion in goods and services in fiscal year 2009.

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## Assessment of Compliance with Section 15(k)(3) of the Small Business Act

To assess whether the OSDBU director reports directly to the agency head or the deputy head as required by section 15(k)(3) of the Small Business Act, we focused on the seven agencies with major contracting activity and nine additional agencies that we reported in September 2003 were not complying with this requirement.<sup>3</sup> These nine agencies were the Departments of Agriculture, Commerce, Education, the Interior, Justice, State, and the Treasury; the Environmental Protection Agency; and the Social Security Administration.<sup>4</sup> We considered agencies to be in compliance if the designated OSDBU directors exercised the OSDBU responsibilities and reported directly to and were responsible only to the agency head or the agency head's deputy. To determine compliance, we reviewed organization charts to identify where the OSDBU was located in relation to the agency head or deputy head; OSDBU directors' performance appraisals for the previous 2 years to identify the agency official who evaluated the OSDBU director's performance;<sup>5</sup> the most recent position description of the OSDBU director to identify the OSDBU director's supervisor; and various other agency documents, such as reports and memoranda discussing the agency's small business programs. We also interviewed the designated OSDBU directors at each agency to identify the official(s) they had reported to during the past year and asked them to provide information characterizing the reporting relationship, such as the extent to which small business issues were discussed. In addition, we reviewed and analyzed section 15(k)(3).

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## Survey of OSDBU Directors

To obtain information on the functions conducted by the OSDBU, actions taken by the OSDBU to further small business contracting opportunities, and the effects of funding and staff levels on these efforts, we surveyed the OSDBU directors at 25 federal agencies using a Web-based survey. The survey was similar to one we administered in 2003 and asked the OSDBU directors about their roles and functions in three areas: participation in the

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<sup>3</sup>See GAO, *Small and Disadvantaged Businesses: Some Agencies' Advocates Do Not Report to the Required Management Level*, [GAO-03-863](#) (Washington, D.C.: Sept. 4, 2003).

<sup>4</sup>In 2003, we also determined that one of the seven agencies with major contracting activity, the Department of Health and Human Services, was noncompliant. Our list of noncompliant agencies also included the Federal Emergency Management Agency, but we excluded it from this review because it is no longer an independent agency; it became a part of the Department of Homeland Security in March 2003.

<sup>5</sup>We generally reviewed the OSDBU director's fiscal year 2009 and fiscal year 2010 performance appraisals. However, in a few cases, the fiscal year 2010 performance appraisal was not yet available.

agency procurement process, facilitation of small business participation in agency contracting, and interaction with the Small Business Administration (SBA).<sup>6</sup> The survey questions covered the OSDBU functions listed in 15(k) of the Small Business Act as well as additional functions the OSDBUs might perform. In addition, the survey asked OSDBU directors about challenges—including limited budgetary resources and lack of adequate staffing levels—they face in carrying out their responsibilities.

### Selection of Survey Respondents

We selected 25 agencies to include in our survey of OSDBU directors. These agencies included all 20 civilian agencies that procured more than \$800 million in goods and services in fiscal year 2009, as well as the Department of Defense (DOD)—Office of the Secretary; the Departments of the Air Force, Army, and Navy; and the Defense Logistics Agency (DLA). The 20 agencies were responsible for more than 98 percent of civilian agency obligations in fiscal year 2009. We selected the Air Force, Army, Navy, and DLA because they were the four components within DOD that procured the most goods and services in fiscal year 2009; together, they were responsible for more than 90 percent of DOD's obligations. The 25 agencies we selected included all 24 agencies we surveyed in 2003 and the Department of Homeland Security.<sup>7</sup>

### Survey Design and Administration

To have comparable data with the 2003 survey of OSDBU directors, our survey instrument listed the same questions and response choices as the 2003 survey. Updates to the 2003 survey were limited to making minor word changes, reordering several questions, and deleting several questions that were no longer relevant. We obtained input from GAO experts on survey design. We also pretested the survey instrument with two OSDBU directors to help ensure that the questions were still applicable and would be correctly interpreted by respondents. Agency officials, including the OSDBU directors, were notified about the survey before it was launched on November 1, 2010.<sup>8</sup> OSDBU directors were asked to complete the

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<sup>6</sup>We published the results of our 2003 survey in March 2004. See GAO, *Small and Disadvantaged Businesses: Most Agency Advocates View Their Roles Similarly*, [GAO-04-451](#) (Washington, D.C.: Mar. 22, 2004).

<sup>7</sup>We did not survey the Department of Homeland Security in 2003 because it was still in the process of being established.

<sup>8</sup>The survey was launched by electronically distributing information on accessing the survey to the OSDBU directors. Each OSDBU director was issued a unique username and password to access the survey.

survey by November 22, 2010, and by December 29, 2010, we had a 100 percent response rate.<sup>9</sup>

From January to March 2011, we conducted follow-up with 22 OSDBU directors who answered that one or more of the functions listed in 15(k) of the Small Business Act was not a function of their office or who did not provide responses to these questions. The purpose of the follow-up was to determine which office, if not the OSDBU, carried out these functions at their agency or to collect answers from OSDBU directors who did not provide them initially. To do this, we conducted interviews with 11 OSDBU directors and corresponded via e-mail with 11 others. Based on this follow-up, we changed 16 of the original survey answers related to whether the OSDBU director viewed a section 15(k) responsibility as an OSDBU role. Answers were changed only if at least one of the following criteria were satisfied: the OSDBU directors explicitly stated that they wished to change their answer and provided an explanation for the change; the director misunderstood the question; or the director provided a response to an initially unanswered question.

Additionally, we asked 11 of the 22 OSDBU directors with whom we were conducting follow-up for further explanation of challenges they had identified as affecting their office to a great or very great extent. Two of the respondents requested that we change their responses to several challenges due to initially misunderstanding the question. We agreed and these adjustments are reported in our findings. Also, as necessary, we followed-up with OSDBU directors to clarify their responses to our open-ended questions.

While the OSDBU directors at 25 agencies were asked to participate in the survey and the survey results are therefore not subject to sampling errors, not all respondents answered every question. Nonresponse, including item nonresponse, and the practical difficulties of conducting any survey, may introduce error in survey results. We took steps to minimize such errors by conducting follow-up discussions with respondents who failed to answer specific questions, and by checking and verifying survey responses and analysis.

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<sup>9</sup>The survey was left open after November 22, 2010, for the four OSDBU directors who had started the survey but did not complete it until December 29, 2010.

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## Survey Analysis

The survey contained closed-ended questions that we asked OSDBU directors to answer by selecting from a finite number of response categories. For example, some questions asked OSDBU directors to select “Yes—an OSDBU role or function” or “No—not an OSDBU role or function” based on if a certain function was performed by their office. Other questions asked OSDBU directors to identify the extent to which they performed a certain function or the extent to which a certain factor was a challenge in carrying out the responsibilities of their office. Our analysis involved reviewing the frequency of responses to a given question using aggregate survey data. In the report, there are instances in which we identify all of the responses and other instances in which we identify the most common response. This report does not contain all the results from the survey; the survey and a more complete tabulation of the results are provided in a supplement to this report ([GAO-11-436SP](#)).

The survey also contained open-ended questions that asked OSDBU directors to provide a narrative response. Most of these open-ended questions provided respondents the opportunity to explain answers provided to close-ended questions. For example, some closed-ended questions asked the respondents if a certain activity was a function of their office and the subsequent open-ended question asked them to elaborate on which office carries out this role or function if they had responded “No—not an OSDBU role or function” to the prior question. We used these open-ended responses to provide context to close-ended questions, and some of these narrative responses were included in our findings.

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## Interviews with Agency Officials and Review of Agency Documents

To examine the actions taken by the OSDBU and other agency officials to further small business contracting opportunities and the effects of funding and staff levels, we interviewed agency officials and reviewed documents at the seven agencies with major contracting activity. Also, we reviewed agency documentation, such as policy statements issued by agency leadership on OSDBU practices or small business efforts, small business manuals or strategic plans, and budget and staffing documentation. We interviewed the OSDBU directors at the seven agencies on the actions they and other agency officials had taken to further small business contracting; methods used by SBA and the agency to hold officials accountable for furthering small business contracting; and challenges that affected these efforts, such as funding and staffing levels. Furthermore, we reviewed documentation and data related to the SBA small business goaling program and spoke with SBA officials about this program and reviewed OSDBU council documentation and spoke with council leadership.

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We conducted our work from June 2010 to May 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



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# Appendix II: Reporting Relationships at Seven Agencies Not in Compliance with Section 15(k)(3)

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As discussed in the body of our report, seven agencies were not in compliance with section 15(k)(3) of the Small Business Act, which requires that the director of the Office of Small and Disadvantaged Business Utilization (OSDBU) be responsible only to and report directly to the agency head or deputy head. We found that a variety of reporting structures were in place. OSDBU directors either reported to lower-level officials than the agency head or deputy or had delegated their OSDBU director responsibilities to officials who did not report to either the agency head or the deputy head.

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## OSDBU Directors at Four Agencies Did Not Report to the Agency Head or Deputy Head

At the Departments of Commerce, the Interior, and Justice and the Social Security Administration (SSA), the OSDBU directors reported to officials at lower levels than the agency head or deputy head.

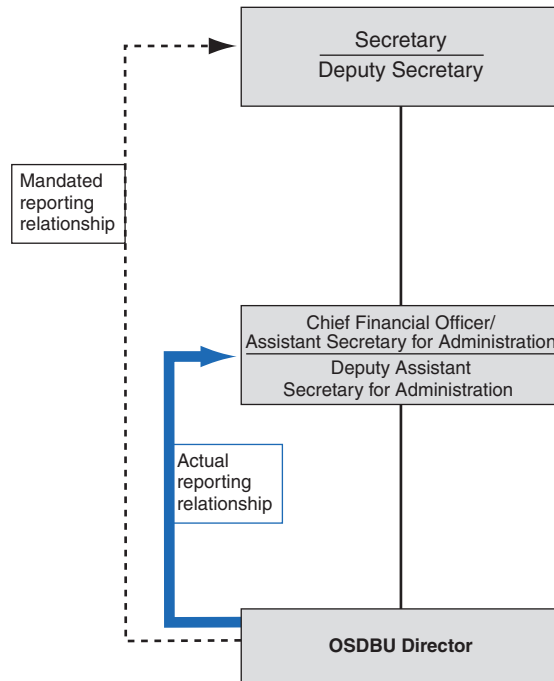
### Department of Commerce

A document outlining the organization structure of the Department of Commerce's Office of the Chief Financial Officer and Assistant Secretary for Administration stated that the OSDBU director reported to the Deputy Secretary on matters of policy and to the Assistant Secretary and Deputy Assistant Secretary for Administration on administrative matters.<sup>1</sup> However, the OSDBU director at Commerce stated that she reported to the Deputy Assistant Secretary for Administration for all small business matters and to the Assistant Secretary for Administration for administrative matters such as budget and personnel. The organization chart also showed a direct link from the OSDBU to the Deputy Assistant Secretary for Administration and the Assistant Secretary for Administration (see fig. 3). In fiscal year 2009, the Assistant Secretary for Administration evaluated the OSDBU director's performance, while the Deputy Assistant Secretary for Administration signed her performance appraisal in fiscal year 2010. The OSDBU director stated that she had never met the Secretary or previous Deputy Secretary and only met the new Acting Deputy Secretary in December 2010.

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<sup>1</sup>The Assistant Secretary for Administration is also the Chief Financial Officer.

Figure 3: OSDBU Director’s Reporting Relationship at the Department of Commerce, as of April 2011

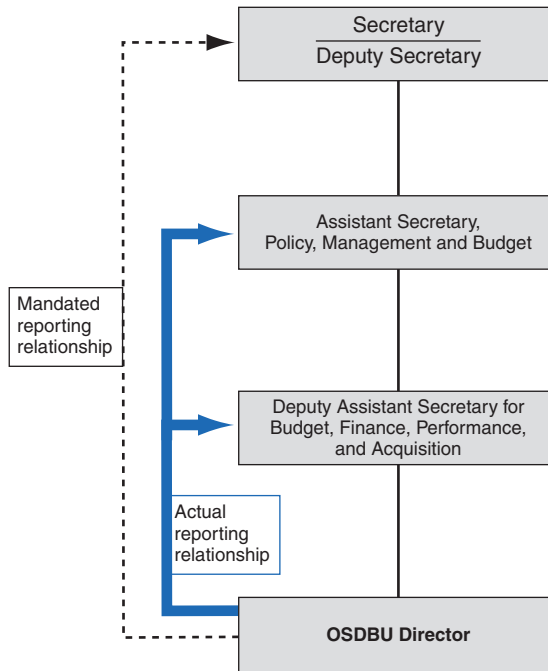


Source: GAO.

Department of the Interior

The OSDBU director at the Department of the Interior reported to the Deputy Assistant Secretary for Budget, Finance, Performance, and Acquisition and to the Assistant Secretary, Policy, Management and Budget (see fig. 4). The organization chart had a notation that the OSDBU director reported to the Secretary and received administrative support from the Deputy Assistant Secretary for Budget, Finance, Performance, and Acquisition, who in turn reported to the Assistant Secretary, Policy, Management and Budget. However, the OSDBU director told us he had never met with the Secretary or Deputy Secretary and they had not provided direct input into his performance appraisals. Instead, the OSDBU director told us he met frequently with the Deputy Assistant Secretary for Budget, Finance, Performance, and Acquisition on administrative and small business matters. The director’s position description indicated that the director reports to the Deputy Assistant Secretary. His two most recent performance appraisals were signed by the Deputy Assistant Secretary and the Assistant Secretary for Policy, Management and Budget, respectively.

Figure 4: OSDBU Director's Reporting Relationship at the Department of the Interior, as of April 2011

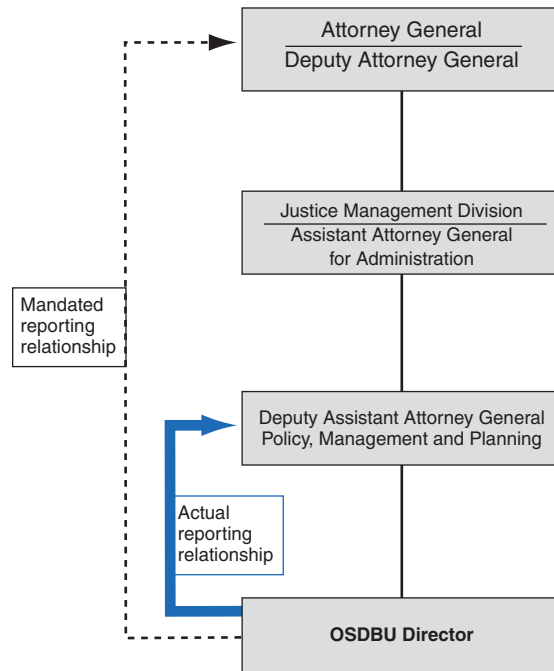


Source: GAO.

## Department of Justice

As shown in figure 5, the OSDBU director at Justice reported to the Deputy Assistant Attorney General for Policy, Management and Planning. OSDBU officials told us the current reporting structure was the same structure that was in place in 2003. The organization chart showed that the OSDBU was located within the Justice Management Division, with the director under the supervision of the Deputy Assistant Attorney General for Policy, Management and Planning. The Justice Management Division was headed by the Assistant Attorney General for Administration, who reports to the Deputy Attorney General. While the organization chart showed that the OSDBU was located within the Justice Management Division for administrative purposes, the OSDBU director's position description listed his immediate supervisor as the Deputy Assistant Attorney General for Policy, Management and Planning. The Deputy Assistant Attorney General signed the OSDBU director's two most recent performance appraisals.

Figure 5: OSDBU Director's Reporting Relationship at the Department of Justice, as of April 2011



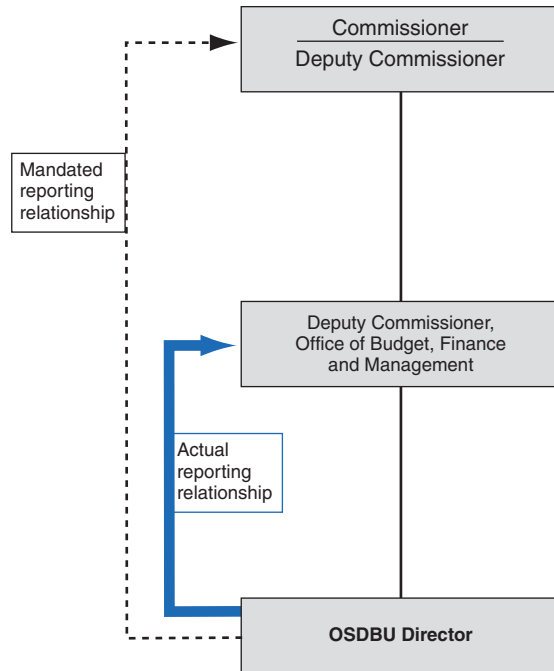
Source: GAO.

## Social Security Administration

The OSDBU director at SSA reported to the Deputy Commissioner, Office of Budget, Finance and Management, who was one of nine deputy commissioners managing various programs and operations (see fig. 6). Both the organization chart and the OSDBU director's position description confirmed this reporting relationship. The OSDBU director told us that he reported to this Deputy Commissioner for small business matters. Additionally, the director's most recent performance appraisal was signed by the Deputy Commissioner, Office of Budget, Finance and Management. The director confirmed that this same structure was in place in 2003.<sup>2</sup> The OSDBU director also told us he had never met either the Commissioner or Deputy Commissioner of SSA.

<sup>2</sup>Since 2003, the name of the office had changed from the Office of Finance, Assessment, and Management to the Office of Budget, Finance and Management.

Figure 6: OSDBU Director’s Reporting Relationship at the Social Security Administration, as of April 2011



Source: GAO.

### OSDBU Directors at Three Agencies Delegated Their OSDBU Responsibilities to Lower-Level Officials

As we found in our 2003 report, the designated OSDBU directors at the Departments of Agriculture, State, and the Treasury delegated their responsibilities to officials who did not directly report to either the Secretaries or Deputy Secretaries. At these agencies, the Assistant Secretary who managed the agency’s administrative functions was designated as the statutory OSDBU director. The Assistant Secretaries then delegated nearly all of their OSDBU responsibilities to lower-ranking officials who reported directly to the Assistant Secretaries. The lower-ranking officials thus became the de facto OSDBU directors.

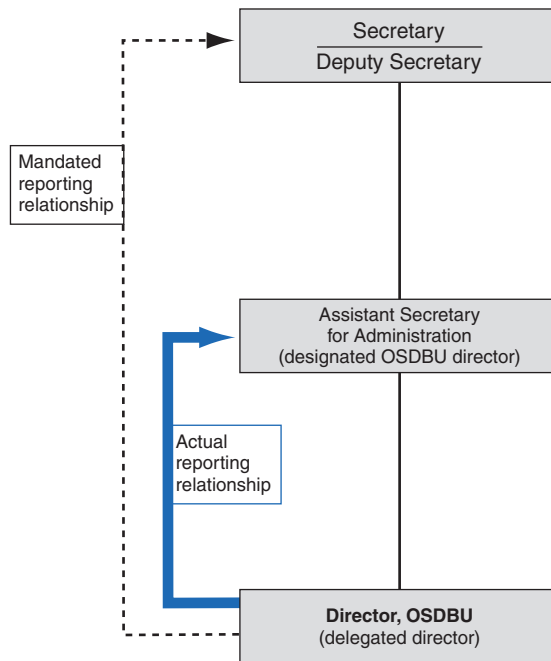
#### Department of Agriculture

The designated OSDBU director at the Department of Agriculture was the Assistant Secretary for Administration, who reported to the Secretary and Deputy Secretary. However, the Assistant Secretary had delegated nearly all of his OSDBU responsibilities to a lower-level official (see fig. 7). This structure was the same one that we determined in 2003 was not in compliance with the Small Business Act. The delegated OSDBU director told us that he did not report to the Secretary or Deputy Secretary on

**Appendix II: Reporting Relationships at Seven Agencies Not in Compliance with Section 15(k)(3)**

matters involving policy, budget, and personnel. The agency's organization chart confirmed that the delegated OSDBU director reported to the Assistant Secretary for Administration. The Assistant Secretary for Administration and the Secretary signed the director's most recent performance appraisal.

**Figure 7: OSDBU Director's Reporting Relationship at the Department of Agriculture, as of April 2011**



Source: GAO.

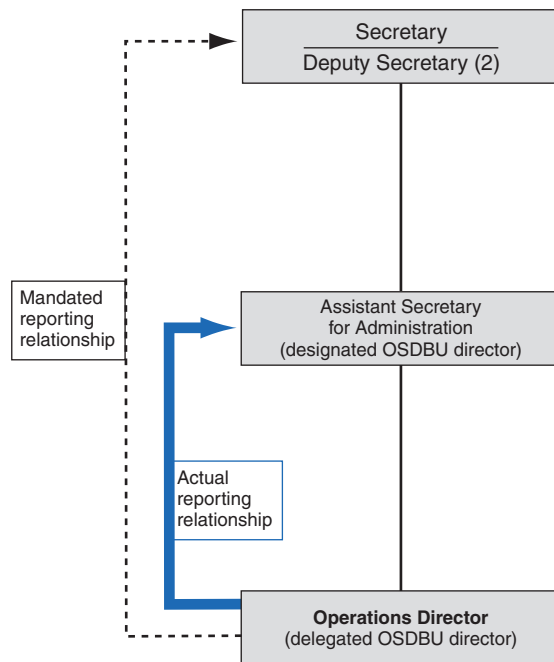
Other evidence showed that the delegated OSDBU director carried out the day-to-day implementation of the agency's OSDBU. The delegated director told us he handled the day-to-day duties and functions of Agriculture's OSDBU and that he spent 100 percent of his time on OSDBU duties and functions. Moreover, his position description indicated that he was the official responsible for carrying out the duties and functions listed under section 15(k). The position description stated, among other things, that the delegated director was responsible for (1) establishing short- and long-range program objectives, time schedules, and courses of action for the accomplishment of small business goals; (2) formulating, recommending, and implementing broad policies and procedures that provide the structural framework for all OSDBU functions; and (3) keeping abreast of all OSDBU activities and initiating any corrective actions deemed

necessary. In contrast, OSDBU officials stated that the Assistant Secretary for Administration spent time on OSDBU activities on an as-needed basis but estimated that it averaged about 3 to 4 hours per week.

Department of State

The Assistant Secretary for Administration was the designated OSDBU director at the State Department. The Assistant Secretary, who reported to one of the department's two Deputy Secretaries on small business matters, had delegated his OSDBU responsibilities to the Operations Director for the OSDBU (see fig. 8). In fiscal year 2010, the Operations Director's performance appraisal was signed by the Acting Assistant Secretary for Administration. The position description for the Operations Director indicated that he carried out the functions of the OSDBU director. For example, it showed that his duties included (1) providing overall direction for policies and programs governing the agency's procurement and financial assistance actions in accordance with the Small Business Act and (2) developing small business goals.

**Figure 8: OSDBU Director's Reporting Relationship at the Department of State, as of April 2011**



Source: GAO.

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Department of the Treasury

The Assistant Secretary of the Treasury for Management/Chief Financial Officer/Chief Performance Officer was the designated OSDBU director. He stated that he was responsible for meeting the agency's small business goals and interacted with the Secretary and Deputy Secretary regularly, including providing updates on small business matters. However, the Director of the Office of Small Business Programs—an official who did not directly report to either the Secretary or the Deputy Secretary—was responsible for day-to-day management of Treasury's small business programs. According to Treasury, the Director of the Office of Small Business Programs reported to the Director of the Office of Minority and Women Inclusion, who in turn reported to the Assistant Secretary (see fig. 9).<sup>3</sup> The Director of the Office of Small Business Programs stated that she spent 100 percent of her time on small business matters, which included all of the functions described in section 15(k) of the Small Business Act. Her position description confirmed this statement, indicating that her responsibilities included (1) planning, developing, issuing, and providing overall direction for policies and programs governing Treasury procurement and financial assistance action in accordance with the Small Business Act and (2) directing Treasury's annual goal-setting process.

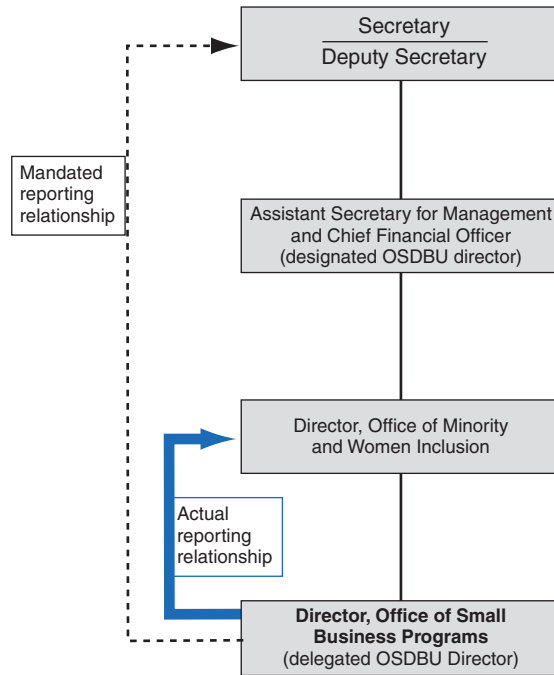
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<sup>3</sup>Until March 2011, the Director of the Office of Small Business Programs reported directly to the Assistant Secretary for Management. In March 2011, pursuant to Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203), Treasury established an Office of Minority and Women Inclusion, whose director reported directly to the Assistant Secretary for Management.



**Appendix II: Reporting Relationships at Seven Agencies Not in Compliance with Section 15(k)(3)**

**Figure 9: OSDBU Director's Reporting Relationship at the Department of the Treasury, as of April 2011**



Source: GAO.

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# Appendix III: Office of Small and Disadvantaged Business Utilization Directors Who Reported that They Did Not Carry Out Certain 15(k) Functions

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The number of Office of Small and Disadvantaged Business Utilization (OSDBU) directors surveyed who did not view a section 15(k) function as their current responsibility varied, depending on the specific function. The number ranged from 1 who did not view maintaining supervisory authority over OSDBU personnel as a function to 11 who did not view assisting small businesses to obtain payments from prime contractors as a responsibility. In their written comments and follow-up interviews, the directors who did not view a section 15(k) function as their responsibility generally stated that contracting, acquisition, or program staff performed it.

- The OSDBU director at the Social Security Administration (SSA) reported that maintaining supervisory authority over OSDBU personnel was not a function of his office because he did not have staff.
- The OSDBU director at the Office of Personnel Management (OPM) reported that attempting to identify proposed solicitations that involved bundling of contract requirements was not a function of his office. He commented that the contracting office within his agency performed this function.
- The OSDBU director at SSA reported that working with agency acquisition officials to revise procurement strategies for bundled contract requirements was not a function of his office. He commented that no office carried out this role. Rather, he noted that when contract bundling was identified, the acquisition official prepared a bundling justification for the head of the procuring activity to sign. In a follow-up interview, he clarified that nothing in the agency's policies required coordination with the OSDBU on contract bundling or gave the OSDBU the opportunity to revise procurement strategies.
- Five OSDBU directors reported that facilitating small businesses' participation as subcontractors to bundled contracts was not a function of their office. At the Department of Agriculture and OPM, the OSDBU directors commented that their agencies had not bundled any contracts. The Agriculture OSDBU director also stated that his office evaluates proposed contract actions to ensure that there are no bundled contracts. The OSDBU director at the Office of the Secretary of Defense reported that this function was generally performed by the contracting offices at the Department's individual components, such as the Army, Navy, Air Force, and Defense Logistics Agency (DLA). In a follow-up interview, the OSDBU director at SSA stated that his role was limited by agency policy to reviewing subcontracting plans to ensure that certain clauses required by the Federal Acquisition Regulation were included. He noted that he would need additional resources to advocate for increased small business

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**Appendix III: Office of Small and Disadvantaged Business Utilization Directors Who Reported that They Did Not Carry Out Certain 15(k) Functions**

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participation in subcontracting. The OSDBU director at the Department of Commerce explained that the OSDBU did not have the staff to review subcontracting plans.

- Six OSDBU directors reported that assisting small businesses to obtain payments from their agencies was not a function of their office. All six directors—Departments of the Air Force, Education, and the Interior; the Environmental Protection Agency (EPA); Office of the Secretary of Defense; and SSA—reported that payment issues were addressed by agency officials in the contracting, acquisition, or program offices.
- Seven OSDBU directors reported that determining a small business set-aside for an individual contract was not a function of their OSDBU. Five of these directors (Departments of the Army, Education, and Housing and Urban Development (HUD); the Office of the Secretary of Defense; and OPM) commented that their agency’s contracting or program offices performed this function. The OSDBU directors at the Departments of Transportation and Energy commented that they reviewed acquisitions over a certain threshold level (\$150,000 at Transportation and \$3 million at Energy).
- Ten OSDBU directors reported that assigning a small business technical advisor to each office with an SBA procurement center representative was not a function of their office. In follow-up communication, the Acting OSDBU director at the Department of Veterans Affairs (VA) explained that his office had not assigned a small business technical advisor to each office with a procurement center representative but noted that OSDBU staff performed duties similar to those of a technical advisor. The Acting OSDBU director at the Department of Energy explained that because the agency had already implemented several levels of review by various technical and procurement staff, it had delayed hiring and assigning a technical advisor to contracting offices. However, he stated that the office was reassessing their review processes and resources to determine when such a hire would be feasible. The remaining eight OSDBU directors at the Departments of the Air Force, the Army, Commerce, the Interior, Justice, the Navy, and Transportation and DLA reported that the contracting offices within their agencies assigned small business technical advisors. For instance, Air Force officials commented that small business technical advisors were assigned only to field sites where they could assist in identifying specific opportunities for small businesses.
- Eleven OSDBU directors reported that assisting small businesses to obtain payments from prime contractors was not one of their functions. Seven of these directors (Departments of Agriculture, the Air Force, and Education;

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**Appendix III: Office of Small and  
Disadvantaged Business Utilization Directors  
Who Reported that They Did Not Carry Out  
Certain 15(k) Functions**

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EPA; HUD; Office of the Secretary of Defense; and SSA) commented that contracting, acquisition, or program officials carried out this function at their agencies. Two of the seven directors clarified in follow-up interviews that they were not privy to subcontractor information. The OSDBU director at OPM commented that because the payment of invoices by a prime contractor to its subcontractors is part of a contractual arrangement to which the government is not a party, this function should not be performed by anyone at the agency. The OSDBU director at the Department of Transportation commented that the office provides counseling on progress payments and prompt payment guidance to small businesses. The OSDBU directors at Interior and the U.S. Agency for International Development commented that if a small business were to contact the OSDBU for payment assistance, the OSDBU would facilitate communication with the contracting officer responsible for payments.

# Appendix IV: Comments from the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION

THE DEPUTY SECRETARY

May 13, 2011

Mr. William B. Shear  
Director, Financial Markets and  
Community Investment Issues  
Government Accountability Office  
Washington, DC 20548

Dear Mr. Shear:

Thank you for the opportunity to review the draft report entitled, "Small Business Contracting: Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required" (GAO-11-418). We are pleased that the report concluded that the U.S. Department of Education is in compliance with reporting requirements, as stipulated in Section 15(k) of the Small Business Act, and that there is no need for any recommendations to the Department regarding the functioning of the Office of Small and Disadvantaged Business Utilization (OSDBU).

Since GAO's report in 2003 found that the Department should correct certain deficiencies about the reporting structure of the OSDBU, the Department has taken definitive corrective steps to achieve and remain in compliance with all applicable requirements. For example, pursuant to Section 15(k)(3) of the Small Business Act, the Department's OSDBU Director reports directly to the Deputy Secretary, thus providing the Director with direct access to the top leadership in the Department.

We appreciate the valuable information in the draft report and are pleased with GAO's recognition of the Department's changes to the reporting structure and to the important work performed by the OSDBU. The Department and OSDBU take the significant functions of the OSDBU seriously, and we work on a "continuous improvement model" to make its operations as effective as possible. I would also like to note that while it was reported that functions referenced in the footnotes on page 17 and discussed further in corresponding bullets on pages 57 and 58 are not primary functions of the Department's OSDBU, the Department's OSDBU does play an active role in carrying out these functions through ongoing collaboration with other Department offices as appropriate.

Dr. Kristi Wilson Hill, our OSDBU Director, is available if you or members of your staff have any questions. She can be reached by telephone at (202) 245-6301 or by e-mail at [Kristi.Wilson@ED.gov](mailto:Kristi.Wilson@ED.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "amiller".

Anthony W. Miller

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202  
[www.ed.gov](http://www.ed.gov)

# Appendix V: Comments from the Department of Commerce



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Chief Financial Officer and**  
**Assistant Secretary for Administration**  
Washington, D.C. 20230

William B. Shear  
Director  
Financial Markets and  
Community Investment Issues  
U.S. Government Accountability Office  
441 G. Street, N.W.  
Washington, D.C. 20548

Dear Mr. Shear:

Thank you for the opportunity to comment on the draft Government Accountability Office report entitled, "Small Business Contracting: Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required (GAO-11-418)."

The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) reports directly to the Deputy Secretary on all legislative and policy issues and to the Chief Financial Officer and Assistant Secretary for Administration on administrative matters such as personnel and budget. I believe this organizational structure complies with the provisions of section 15(k) of the Small Business Act, strengthens the role of OSDBU within the Department, and focuses the Department's resources to create contracting opportunities for small businesses.

The Department of Commerce is deeply committed to the goals of the Small Business Act and our record of small business goal achievement reflects our determination to create opportunities for small, small disadvantaged, women-owned, HUBZone, and service-disabled veteran-owned small business concerns. The Department has exceeded its small, small disadvantaged, women-owned, and service-disabled veteran-owned business goals this year. The Department also received a preliminary score of an A from the Small Business Administration for its Fiscal Year 2010 Scorecard, up from a C in Fiscal Year 2009.

If you have any questions, please contact Fred Stephens, Deputy Assistant Secretary for Administration, at (202) 482-4951.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott B. Quehl".

Scott B. Quehl  
Chief Financial Officer and  
Assistant Secretary for Administration

# Appendix VI: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

MAY 11 2011



Mr. William B. Shear  
Director, Financial Markets and  
Community Investment Issues  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Shear:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO) draft report entitled, *SMALL BUSINESS CONTRACTING: Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required*, (GAO-11-418).

GAO's report states that the Department of the Interior does not comply with the Small Business Act requirement that the Office of Small and Disadvantaged Business Utilization report to the Secretary or Deputy Secretary. GAO recommends that the Department of the Interior comply with this requirement or report to Congress and could seek statutory flexibilities or exceptions.

The Department does not have comments on the draft report, but will be evaluating GAO's recommendation and evaluating options to resolve this issue. We are being diligent about this issue as DOI has a high performing small business program with over 50 percent of contract actions awarded to small and disadvantaged businesses.

We will be reporting back to GAO once we have finalized our plans. If you have any questions, please contact Pam Haze, Deputy Assistant Secretary – Budget, Finance, Performance and Acquisition at (202) 208-4775.

Sincerely,

Rhea S. Suh  
Assistant Secretary  
Policy, Management and Budget

# Appendix VII: Comments from the Department of Justice



U.S. Department of Justice  
Justice Management Division

MAY 13 2011

Washington, D.C. 20530

William B. Shear  
Director, Financial Markets and  
Community Investment Issues  
U. S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Shear:

On April 28, 2011, you provided the Department with a copy of the Government Accountability Office's draft report entitled *SMALL BUSINESS CONTRACTING: Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required* (GAO-11-418) with a request for comments by May 13, 2011. We appreciate the opportunity to review and comment on the draft report.

While the Department agrees that the Office of Small and Disadvantaged Business Utilization (OSDBU) is located within the Justice Management Division, this placement has been, and remains as such, for administrative purposes. Through this organizational structure, the Deputy Attorney General ensures that small businesses are provided the maximum practicable opportunity to participate in contracting opportunities throughout the Department both as prime contractors and subcontractors. The administrative placement of OSDBU within the Justice Management Division is not a reflection on the Department's commitment to the small business programs. Rather, it is reflection of how that Office may best advocate for the use of small businesses in our contracting efforts. The Department feels that the current placement of the OSDBU allows for the efficient management and implementation of the small business contracting programs that are vital to the Department in satisfying its mission. As the Department has previously advised GAO and the Congress, the Director, OSDBU reports directly to the Deputy Attorney General on matters of substance requiring his direct attention.

If you have any questions concerning the Department's response on this matter, please contact Richard Theis, Department of Justice Audit Liaison on (202) 514-0469.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee L. Bofhus".

Lee L. Bofhus  
Assistant Attorney General  
for Administration



# Appendix VIII: Comments from the Department of State



United States Department of State

Chief Financial Officer

Washington, D.C. 20520

**MAY 12 2011**

Ms. Jacquelyn Williams-Bridgers  
Managing Director  
International Affairs and Trade  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548-0001

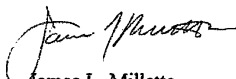
Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "SMALL BUSINESS CONTRACTING: Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads," GAO Job Code 250536.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Shapleigh Drisko, Director, Bureau of Administration, Office of Small and Disadvantaged Business Utilization at (703) 875-6823.

Sincerely,

  
James L. Millette

cc: GAO – William B. Shear  
A – Will Moser  
State/OIG – Evelyn Klemstine

**Department of State Comments on GAO Draft Report**

**SMALL BUSINESS CONTRACTING: Action Needed by Those  
Agencies Whose Advocates Do Not Report to Agency Heads as  
Required**  
(GAO-11-418, GAO Code 250536)

The Department of State is pleased to respond to the GAO's report regarding actions needed pertaining to placement of the Office of Small and Disadvantaged Business Utilization (OSDBU). The report recommends that State Department and other agencies found not in compliance take steps to comply with the requirement of Section 15(k) (3) of the Small Business Act that OSDBU directors be responsible only to, and report directly to, the head or deputy head of the agency or to report to Congress on why they have not complied including any requests for regulatory flexibility as appropriate.

As stated in the report (p. 13), the Department of State has designated the Assistant Secretary of State for Administration as the Department's OSDBU Director. Section 211.2 of Volume 1 of the Foreign Affairs Manual provides that the Assistant Secretary of State for Administration "[d]irects administrative oversight and services of the Office of Small and Disadvantaged Business Utilization (A/SDBU), and reports directly to the Deputy Secretary concerning its policies and activities."

GAO finds the Department of State not to be in compliance with Section 15(k)(3) of the Small Business Act on two bases: 1) the Assistant Secretary of State for Administration is not directly involved in the day-to-day operations of the OSDBU, but has delegated these functions to an Operations Director; 2) the Operations Director, whom GAO views as the "true" OSDBU Director reports not to the Secretary or Deputy Secretary but to the Assistant Secretary of State for Administration, who in turn generally reports to the Under Secretary for Management. Report at pp. 12-13. We respectfully dissent from GAO's conclusions on both these points.

While OSDBU directors are responsible for the implementation and execution of the specific functions and duties assigned under sections 8 and 15 of the Small Business Act, there is no requirement in Section 15(k)(3) that the director personally perform any specific functions. The director, of course, remains responsible for OSDBU performance whether he or she personally performs the functions or delegates portions of the OSDBU

authority. Executive Branch authority is typically exercised through delegation, with an agency's basic authority being vested in the agency head and subsequently redelegated. Sometimes this redelegation authority is statutorily recognized (*e.g.* 26 U.S.C. §7801) and in other cases it is implied, *See, Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 121 (1947). Accordingly, the Department of State concludes that the delegation of functions from the Assistant Secretary of State for Administration as statutory OSDBU Director to the OSDBU Operations Director is permitted by Section 15(k)(3).

As noted above, the Department's Organization Manual 1 FAM 211.2(i) expressly provides that the Assistant Secretary for Administration in his role as OSDBU Director "reports directly to the Deputy Secretary" concerning OSDBU activities. The Department believes this meets the requirements of Section 15(k) (3). To the extent that this internal regulation may not have been called to GAO's attention during its review, we apologize for the oversight. Moreover, while this regulation may be viewed as merely addressing literal compliance with Section 15(k)(3), placement of OSDBU Director responsibilities with the Assistant Secretary of State for Administration addresses the plain Congressional intent in enacting Section 15(k)(3) to give OSDBU activities visibility and "clout" within the agency. Notwithstanding the fact that for organizational chart purposes, the Assistant Secretary of State for Administration reports to the Under Secretary for Management, Assistant Secretaries in the Department can have direct access to the Secretary and may report directly to her on matters of importance in their respective bureaus. Assistant Secretaries attend the Secretary's daily senior staff meetings. A mid-level employee designated OSDBU Director would have no comparable access or influence, no matter where placed on the organizational chart.

The Department of State does not take lightly dissent from the views of the GAO. Nevertheless, the Department believes that the effectiveness of OSDBU's operations depend on our organizational arrangements and are borne out by the results of our program.

The Department has a history of small and disadvantaged business goal achievements. In FY09, the Department's scorecard grade exceeded most of the departments reported as being in full compliance with Section 15(k) (3). The Department has also consistently been increasing its goal accomplishments across the board. A comparison of our FY09 and FY10

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data reveals an increase of +.70% for small businesses, +2.29% for small disadvantaged firms, +.73% for Service Disabled Veteran firms, +.62% for woman owned firms and +1.0% for HUBZone firms.

The Department of State believes that to reorganize OSDBU so that its Operations Director would report directly to the Secretary or her Deputy would decrease efficiency. The OSDBU Operations Director regularly meets with and attends the staff meeting of the Assistant Secretary for Administration, who in addition to being the statutory OSDBU Director is the senior Department official directly overseeing Department acquisition programs. The OSDBU Operations Director currently has direct access whenever necessary to decision makers in the Department programs that utilize small and disadvantaged businesses. The real objective of Section 15(k) (3) is to ensure that the OSDBU program receives support from top management. The Department of State has achieved that objective and has followed a reasonable construction of the requirements of Section 15(k) (3) of the Small Business Act.

# Appendix IX: Comments from the Department of the Treasury



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

May 13, 2011

ASSISTANT SECRETARY

William B. Shear  
Director, Financial Markets and Community Investment Issues  
Government Accountability Office (GAO)  
Washington D.C.

Dear Mr. Shear:

This letter is in response to the draft GAO Report to the Chair, Committee on Small Business and Entrepreneurship, U.S. Senate, entitled, *Small Business Contracting: Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required*, May 2011. We wish to respectfully disagree with the reported conclusion that the Department of the Treasury is not in compliance with section 15(k)(3) of the Small Business Act, which requires directors of the Office of Small and Disadvantaged Business Utilization (OSDBU) to report directly to the agency or deputy agency head.

As indicated during the interviews conducted in preparation for the report, the Assistant Secretary for Management (Assistant Secretary) is the Treasury OSDBU Director. The Assistant Secretary for Management, in the capacity of OSDBU Director, has a direct reporting relationship to the Deputy Secretary of the Treasury. This reporting relationship is in compliance with section 15(k)(3) of the Small Business Act. As OSDBU Director, the Assistant Secretary provides oversight and direction to the Office of Small Business Programs as well as to the Treasury bureau heads and their procurement officials in executing the Department's responsibilities under the Small Business Act. The Assistant Secretary reports regularly to the Deputy Secretary and other senior officials on small business program concerns. Senior level focus on small business contracting helped the Department exceed its fiscal year 2010 small business goal.

In the Department of the Treasury, many officials, including the heads of the bureaus, their heads of procurement and the Director of the Office of Small Business Programs (now within the Office of Minority and Women Inclusion), have responsibilities in implementation of our small business program. Individual staff members in each of these areas devote varying amounts of time to small business efforts under section 15(k)(3) of the Small Business Act. The assignment and oversight by the OSDBU Director of day-to-day operations pertaining to small business functions to subordinate officials does not establish any such other officials as the "de facto OSDBU director." Nothing in the statute requires that the OSDBU Director must be an official assigned to small business issues full time.

The GAO report includes a sampling of the benefits of reporting to the agency head or deputy head as conveyed by OSDBU directors identified as complying with section 15(k)(3). These same benefits are derived in the Department of the Treasury with the Assistant Secretary for Management as the OSDBU Director. The Assistant Secretary's execution of small business

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**Appendix IX: Comments from the Department  
of the Treasury**

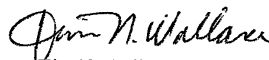
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program responsibilities underscores the commitment of the Department at the most senior levels to our small business goals and sends a message to the rest of the agency. The OSDBU Director participates with senior management peers at meetings where decisions are made and participates in small business outreach and procurement training events hosted by Treasury. The Assistant Secretary for Management, as the OSDBU Director, exerts considerable influence over all acquisition professionals and budget officials at all levels across all Bureaus toward the attainment of small business goals.

The Assistant Secretary's leadership with respect to small business contracting extends beyond the Department. In April 2010, the White House established an Interagency Task Force on Increasing Federal Contracting Opportunities for Small Business. The Assistant Secretary for Management, in the capacity of OSDBU Director, not only represented the Department of the Treasury on the Task Force, but has been instrumental in the design of the Task Force year-end small business goaling campaign.

We urge GAO to recognize that the Department of the Treasury is in full compliance with both the letter and the spirit of section 15(k)(3) of the Small Business Act. We ask that the draft report be revised or amended accordingly.

Sincerely,



Kim N. Wallace  
Assistant Secretary for Legislative Affairs

# Appendix X: Comments from the Social Security Administration



**SOCIAL SECURITY**  
Office of the Commissioner

May 10, 2011

Mr. William B. Shear  
Director, Financial Markets and  
Community Investment Issues  
Government Accountability Office  
441 G. Street, N.W.  
Washington, D.C. 20548

Dear Mr. Shear,

Thank you for the opportunity to review the draft report, "Small Business Contracting: Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required" (GAO-11-418). In the report, you state that we do not comply with section 15(k) (3) of the Small Business Act because our director for the Office of Small and Disadvantaged Business Utilization (OSDBU) does not report directly to our agency or deputy agency head. We reevaluated that reporting relationship, and the OSDBU director will be reporting to our Deputy Commissioner, the deputy agency head for the Social Security Administration. This will bring us into compliance with the Small Business Act.

If you have any questions, please contact me at (410) 965-0520. Your staff may contact Chris Molander at (410) 965-7401.

Sincerely,

Dean S. Landis

SOCIAL SECURITY ADMINISTRATION BALTIMORE, MD 21235-0001

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# Appendix XI: GAO Contact and Staff Acknowledgments

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## GAO Contact

William B. Shear, (202) 512-8678 or [shearw@gao.gov](mailto:shearw@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Paige Smith (Assistant Director), Farah Angersola, Tania Calhoun, Emily Chalmers, Janet Fong, Colleen Moffatt, Marc Molino, Kelly Rubin, Rebecca Shea, Andrew Stavisky, and William Woods made key contributions to this report.



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