

GAO

United States General Accounting Office / 32652
Report to the Secretary of Education

April 1987

**SMALL BUSINESS
ACT**

**Education's
Disadvantaged
Business Advocate Not
Reporting to Proper
Management Level**



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Human Resources Division**B-222903.13****April 10, 1987****The Honorable William J. Bennett
The Secretary of Education****Dear Mr. Secretary:**

In letters dated January 14 and May 2, 1986, the Chairman, House Committee on Small Business, requested that we review 13 agencies to determine their compliance with Section 15(k) of the Small Business Act. In subsequent discussions, the Chairman's office defined the primary concern as the agencies' compliance with Section 15(k)(3), which describes the required reporting level for each agency's Director, Office of Small and Disadvantaged Business Utilization (OSDBU). The Department of Education was one of the departments selected.

To determine if the Department of Education was in compliance with the Small Business Act, Section 15(k)(3), we interviewed officials in the Department's General Counsel's Office and the Director, OSDBU, and reviewed organizational charts, a description of the Director's responsibilities, the Director's performance evaluation, and management instructions concerning the establishment of OSDBU, its mission, reporting level, and current operations. To determine the required reporting relationship for the Director we also reviewed the Small Business Act and its legislative history. We did not evaluate the effectiveness of Education's OSDBU programs. Our work was performed from July through October 1986 at Education's Washington, D.C., headquarters and was done in accordance with generally accepted government auditing standards.

**The Director, OSDBU, Must
Report to the Agency Head
or Deputy**

The Small Business Act requires each federal agency with procurement powers to establish an OSDBU and requires that the agency head appoint a Director for this office. Section 15(k)(3) requires that the Director shall be responsible only to and report directly to the agency head or deputy. Other provisions of the act describe the Director's duties and responsibilities.

The legislative history of Section 15(k) of the Small Business Act shows that Congress intended to mandate a direct reporting relationship between the Director of Small and Disadvantaged Business Utilization and the agency head or deputy. A 1978 report by the Senate Select Committee on Small Business noted that officials who were responsible for advocating small business participation in federal procurements often did not hold high enough positions in the agency to be effective.

The purpose of Section 15(k)(3) is to provide the Director immediate access to the agency's top policymakers and thus maximize the Director's effectiveness as an advocate of small and disadvantaged businesses.

Education Is Not in Compliance With the Law

The Department's OSDBU was established on March 26, 1982, with its Director reporting to the Under Secretary (the second highest departmental official). OSDBU was relocated to the Office of the Comptroller on June 8, 1986. Since that change, the Director has reported to the Comptroller who reports to the Deputy Under Secretary. According to Education's 1986 Mission and Organization Manual, the Director reports to the Under Secretary on all policy matters and to the Comptroller only on administrative matters. The Director told us, however, that he has had no contact with the Secretary or Under Secretary. The Comptroller is also responsible for providing the Director's annual performance evaluation.

We, therefore, conclude that because the Director, OSDBU, is not responsible only to and does not report directly to the Secretary of Education or the Under Secretary, the Director's reporting level is not in compliance with the Small Business Act, Section 15(k)(3).

Recommendation

To bring Education into compliance with Section 15(k)(3) of the Small Business Act, we recommend that the Secretary of Education require the Director, OSDBU, to be responsible only to and report directly to the Secretary or Under Secretary.

Agency Comments

In a December 24, 1986, letter commenting on a draft of our report, Education said it is the Department's desire and intent to comply with the statutory requirement of the Small Business Act, and that the Director, OSDBU, will be accountable only to and report directly to the Under Secretary. The Under Secretary will also prepare the Director's annual performance rating. (See app. I.)

Education is now preparing the documentation necessary to relocate OSDBU and formally change its Director's reporting relationship. When such actions are completed, in accordance with Education's December 24, 1986, letter, the Department will then be in compliance with the Small Business Act, Section 15(k)(3).

As you know, 31 U.S.C. 720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations. This statement must be submitted to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of this report. A similar statement must also be submitted to the Senate and House Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of this report.

As arranged with the Chairman's office, we are sending copies of this report to the Chairman, House Committee on Small Business; the Director, Office of Management and Budget; and other interested parties upon request.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Richard L. Fogel". The signature is written in a cursive, flowing style.

Richard L. Fogel
Assistant Comptroller General

Comments From the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE DEPUTY UNDER SECRETARY FOR MANAGEMENT

24 1986

Mr. Richard L. Fogel
Assistant Comptroller General
Human Resources Division
United States General Accounting
Office
Washington, DC 20548

Dear Mr. Fogel:

This is in response to your request for the comments of the Department of Education on your draft report, "SMALL BUSINESS ACT: Education's Disadvantaged Business Advocate Not Reporting to Proper Management Level." The report concludes that the present organizational position and reporting relationship of the Department's Office of Small and Disadvantaged Business Utilization (OSDBU) is not in compliance with Section 15(k)(3) of the Small Business Act. This statutory provision requires that the OSDBU "be responsible only to, and report directly to, the head of [the] agency or to his deputy."

To comply with the requirement of the Small Business Act, as amended by Public Law 95-507, the Secretary of the Department of Education issued an order on March 26, 1982 creating an OSDBU in the Office of the Under Secretary. For administrative purposes, OSDBU was assigned to the Office of the Deputy Under Secretary for Management (DUSM). However, it was intended that the Director of OSDBU would report directly to the Under Secretary on all policy matters. This arrangement provided for OSDBU to be physically located near the Department's central procurement operations.

As a result of a reorganization effort to reduce the number of organizational units reporting to the DUSM, OSDBU was administratively assigned in June 1986 to the Office of the Comptroller which reports to the DUSM. It continued to be the Department's intent that the Director of OSDBU would report directly to the Under Secretary on matters concerning policy. It is the desire and intent of the Department of Education to comply with the statutory requirement of the Small Business Act. Therefore, the Department will ensure that OSDBU will report directly to the Under Secretary.

All substantive matters will be initiated by the Director of OSDBU and communicated directly to the Under Secretary. Henceforth, the Office of Management will provide only administrative support for OSDBU and be available for whatever consultations that OSDBU believes are necessary and appropriate. In addition, performance ratings for the Director of OSDBU will be prepared by the Under Secretary. This new reporting alignment will assure that the Director, OSDBU, is accountable to and reports directly to the Under Secretary as envisioned by the above-mentioned statute.

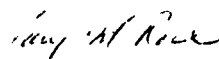
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**Appendix
Comments From the Department
of Education**

Page 2 - Richard L. Fogel

We appreciate the opportunity to provide comments on the report while in draft form. Should you have any questions concerning our comments, please feel free to contact me.

Sincerely,



Mary M. Rose
Deputy Under Secretary
for Management

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