



June 7, 2021

Ms. Lori Gillen
Director
Office of the HUBZone Program
U.S. Small Business Administration
409 3rd Street SW
Washington, D.C. 20416

Dear Director Gillen,

On behalf of the HUBZone Contractors National Council (Council), I would like to commend you and your team on the service and support you provided the HUBZone small businesses throughout the COVID-19 pandemic. During 2020, SBA released three notices that provided critical guidance to HUBZone companies. Heavily publicized through SBA's communication channels, companies developed their compliance strategies based on the following information:

02/07/2020: HUBZone Program FAQ

03/24/2020: HUBZone Program Updates and Flexibilities during COVID-19

10/08/2020: HUBZone Program Updates

In early March 2021, the HUBZone Council began receiving frantic phone calls and emails from companies undergoing the recertification process who had received information from SBA that contradicted the previous 2020 guidance. Based on feedback from our members, concerns center around the following changes:

AREAS OF CONCERN

- The SBA HUBZone 04/30/2021 FAQ states that SBA will not allow businesses to retroactively apply the 10-year principal office or "legacy HUBZone employee" rule. This contradicts SBA guidance released in the 02/07/2020 FAQ and is concerning, as numerous businesses have planned to comply with program requirements based on the 2/07/2020 guidance. These small businesses believe the change will adversely impact their eligibility during the annual recertification review.
- The SBA HUBZone FAQ dated 04/30/2021 states that firms cannot count an employee as a legacy HUBZone employee if the individual lived in a redesignated area during either of the required 180-day periods. SBA's previous FAQ (02/07/2020) did not exclude employees living in re-designated areas or QDA's. Additionally, the new guidance states that companies are not eligible for the legacy employee rule if their principal office is in a redesignated area. Given that these are two separate eligibility requirements, the principal office location should have no relevance on the employee residency requirement. The Council is aware of numerous businesses that have based their compliance strategy based on the previous guidance and are alarmed about how this may impact their eligibility during their annual recertification.
- The SBA HUBZone FAQ dated 04/30/2021 states that Qualified Disaster Areas (QDAs) do not qualify for the 10-year investment rule. This change contradicts SBA's guidance on 10/08/2020,



stating: “*Certified HUBZone firms located in areas that are currently Redesignated Areas and also become designated as QDAs may take advantage of the new provision in the HUBZone regulations that allows firms to purchase a building or enter into a long-term lease in a designated HUBZone and maintain their HUBZone status for up to 10 years depending upon the circumstances. 13 C.F.R. § 126.200(c)(1). This provision is not available to firms located in a Redesignated Area that is not also a QDA.*” Based on this information, many businesses entered into 10-year leases and/or purchased property. This change threatens eligibility for many small businesses who are now bound contractually in long-term leases that they entered into based on SBA’s guidance in October 2020.

- The SBA HUBZone FAQ dated 04/30/2021 references stricter standards surrounding the principal office requirement as it relates to shared and virtual office spaces. The new guidance requires businesses to produce a lease that confirms they have dedicated office space as defined in the FAQ, or, if the lease does not include the necessary information, businesses must obtain a statement from the property manager. Since this is a new requirement, we request that SBA provide adequate time for companies to adjust to these changes.
- SBA released a direct and final rule on 05/05/2021 to extend the HUBZone map freeze until June 30, 2023. The change states that “*During the freeze, no Qualified Census Tracts, Qualified Non-Metropolitan Counties, or Redesignated Areas will lose their HUBZone designation, and no new Qualified Census Tracts, Qualified Non-Metropolitan Counties, or Redesignated Areas are being added to the HUBZone Map. However, Qualified Disaster Areas, Qualified Base Closure Areas, Indian Reservations, and Governor-Designated Covered Areas have continued to be added to the HUBZone Map as appropriate.*” The FY2018 National Defense Authorization Act (NDAA) removed the qualifier “nonmetropolitan” from “state median income” when determining HUBZone Program eligibility for counties. This greatly expanded the number of counties that qualify for HUBZone designation – hundreds of counties were newly able to be added to the map. Based on data available at the time of the change, 313 counties currently re-designated and 430 counties not previously qualified should become qualified and added to the map.. We urge SBA to add these 743 counties to the map expeditiously. The delay in incorporating these county’s is depriving businesses within these communities of valuable opportunities that could assist with their recovery from the COVID-19 pandemic.
- The FAQ released on 04/30/2021 states: “*In order to meet a statutory requirement to process all complete applications within 60 days, the HUBZone program introduced the following improvements, as described in SBA Procedural Notice 6000-20015 (February 23, 2021).*” Of particular concern is that this document was not posted on SBA’s documentation look up page or anywhere else where HUBZone companies could easily access this critical information. Although this information appears to have been only distributed within the SBA, the Council did request a copy of the document for review and has the following concerns:
 - **Reducing the timeline for uploading documents from 10 business days to 3 business days.** Currently, once a firm has validated its application it is sent an automated email from SBA with instructions for uploading all required documents, including a link to the list of required documents. This list of required documents is available on the SBA website and firms should be prepared to upload all required documents when they initiate an application. According to the Procedural Notice, SBA has implemented a change only giving HUBZone companies 3 days to upload the documents. This change is problematic because many of the items on the document request are time sensitive and would be extremely difficult to provide in a 3-day time frame. Additionally, the new guidance



indicates that SBA is using a new document repository, however this information is not updated in the document request nor is there any instructions posted anywhere on the SBA's website. Further, the document request on the SBA website still states that companies will have 10 days to upload the documents. This confusion could cause firms to unnecessarily miss the deadline because the information is not consistent.

- **Unreasonable penalty for lack of timely response.** The Procedural notice indicates that SBA plans to “*Decline applications for lack of response. Currently, SBA may close an application when a firm fails to provide additional or missing information within a prescribed time frame. Closing an application allows the applicant to re-apply immediately. SBA now may decline the application of a firm that fails to submit the requested information within prescribed time frame, which means that the firm will be required to wait 90 days before re-applying to the program.*” This new timetable is unreasonable, as the company has no idea when SBA may request documents. If the email went into junk, or the point of contact is out of the office for a few days and missed the email, a company will be declined and be forced to wait 90 days before reapplying. This is both time-consuming for the company and inefficient for the SBA.

Based on the significance and suddenness of the aforementioned changes, the Council requests the SBA release new guidance providing companies flexibility on their annual recertification in the event that these changes will impact their eligibility. Additionally, we request that the SBA update their website and the HUBZone document request to reflect the most up- to date policies and procedures related to the application and recertification process. This will allow HUBZone companies to comply with HUBZone Program requirements more efficiently and effectively.

We look forward to your response and working with you to address these concerns. Please feel free to contact the undersigned or Michelle Burnett, Executive Director, at info@hubzonecouncil.org or 202-442-1787 with any questions.

Sincerely,

Shirley D. Bailey
President and Chairman of the Board
HUBZone Contractors National Council