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Small Business Administration HUBZone Program

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Summary

The Historically Underutilized Business Zone Empowerment Contracting (HUBZone) program provides participating small businesses located in areas with low income, high poverty, or high unemployment with contracting opportunities in the form of set-asides, sole-source awards, and price-evaluation preferences. Its primary objectives are job creation and increased capital investment in distressed communities. Firms must be certified by the SBA to participate in the program. As of November 27, 2019, the SBA's Dynamic Small Business Search database included 7,183 firms with active HUBZone certifications.

In FY2018, the federal government awarded $9.8 billion to HUBZone-certified businesses. About $2.3 billion of that amount was awarded with a HUBZone preference ($2.1 billion through a HUBZone set-aside, $112.6 million through a HUBZone sole-source award, and $100.7 million through a HUBZone price-evaluation preference). About $1.8 billion was awarded to HUBZone-certified businesses in open competition with other firms. The remaining $5.7 billion was awarded with another small business preference (e.g., set aside and sole source awards for small business generally and for 8(a), women-owned, and service-disabled veteran-owned small businesses).

The HUBZone program's administrative cost is about $8.4 million annually. It received an appropriation of $3.0 million for FY2020 under P.L. 116-69, the Further Continuing Appropriations Act, 2020 (prorated through December 20, 2019), with the additional cost of administering the program provided by the SBA's appropriation for salaries and general administrative expenses.

Congressional interest in the HUBZone program has increased in recent years, primarily due to GAO reports of fraud in the program and efforts by small businesses to ease HUBZone eligibility requirements.

This report examines arguments both for and against targeting assistance to geographic areas with specified characteristics as opposed to providing assistance to people or businesses with specified characteristics. It then assesses the arguments both for and against the continuation of the HUBZone program.

The report also discusses the HUBZone program's structure and operation, focusing on the definition of HUBZone areas and HUBZone small businesses and the program's performance relative to federal contracting goals. It includes an analysis of the SBA's administration of the program and the SBA's performance measures.

This report also examines HUBZone-related legislation, including

- P.L. 114-92, the National Defense Authorization Act for Fiscal Year 2016, which, among other provisions, expanded the definition of a Base Realignment and Closure Act (BRAC) military base closure area to make it easier for businesses located in those areas to meet the HUBZone program's requirement that at least 35% of its employees reside in a HUBZone area. It also extended BRAC base closure area HUBZone eligibility from five years to not less than eight years, provided HUBZone eligibility to qualified disaster areas, and added Native Hawaiian Organizations to the list of HUBZone eligible small business concerns.
- P.L. 115-91, the National Defense Authorization Act for Fiscal Year 2018, which, among other provisions, allows small businesses that have HUBZone status on or before December 31, 2019, to retain that status from January 1, 2020, until the SBA prepares an updated online tool depicting HUBZone qualified areas

(anticipated by the SBA to take place in December 2021). Once the new online tool (currently called the HUBZone map) is operational, the SBA must update it every five years for qualified census tracts and nonmetropolitan counties and when a change in status takes place for other HUBZone types (e.g., when an area becomes or ceases to be a redesignated area). The act also allows governors, starting on January 1, 2020, to petition the SBA each year to designate areas located in nonurban areas, with a population of 50,000 or fewer, and an average unemployment rate at least 120% of the national or state average, whichever is lower, as HUBZones; requires the SBA to process HUBZone certification applications with sufficient and complete documentation within 60 days of receipt; ensures that HUBZone-eligible BRAC areas receive HUBZone eligibility for a full eight years, beginning on the date they are designated a BRAC; and requires the SBA, not later than one year after enactment, to publish performance metrics measuring the HUBZone program's success in promoting economic development in economically distressed areas.

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The HUBZone Program

The Small Business Administration (SBA) administers several programs to support small businesses, including the Historically Underutilized Business Zone Empowerment Contracting (HUBZone) program. The HUBZone program is "a place-based contracting assistance program whose primary objective is job creation and increasing capital investment in distressed communities."[1] It was authorized in 1997 (P.L. 105-135, the HUBZone Act of 1997; Title VI of the Small Business Reauthorization Act of 1997), and the SBA began accepting applications from interested small businesses on March 22, 1999.[2]

The HUBZone program provides participating small businesses located in areas with low income, high poverty, or high levels of unemployment with contracting opportunities in the form of *set-asides*, *sole-source awards*, and *price-evaluation preferences*.[3] The Competition in Contracting Act of 1984 generally requires "full and open competition" for government procurement contracts.[4] However, procurement set-asides are permissible competitive procedures.

A set-aside restricts competition for a federal contract to specified contractors. Set-asides can be exclusive or partial, depending upon whether the entire procurement or just part of it is so restricted. In this case, the competition may be restricted to SBA-certified HUBZone businesses if there is a reasonable expectation of at least two SBA-certified HUBZone bidders and a fair market price.

A sole-source award is a federal contract awarded, or proposed for award, without competition. In addition, in any full and open competition for a federal contract "the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror (other than another small business concern), if the price offered by the qualified HUBZone small business concern is not more than 10% higher than the price offered by the otherwise lowest, responsive, and responsible offeror."[5]

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[1] U.S. Small Business Administration (SBA), *FY2012 Congressional Budget Justification and FY2010 Annual Performance Report*, p. 29, at https://www.sba.gov/sites/default/files/FINAL%20FY%202012%20CBJ%20FY%202010%20APR_0.pdf.

[2] See Rep. James M. Talent, "Conference Report on H.R. 4577, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2001," Extensions of Remarks in the House, *Congressional Record*, vol. 146, part 156 (January 2, 2001), p. E2244; U.S. Congress, House Committee of Conference, *Enactment of Certain Small Business, Health, Tax, and Minimum Wage Provisions*, conference report to accompany H.R. 2614, 106th Cong., 2nd sess., October 26, 2000, H.Rept. 106-1004 (Washington: GPO, 2000), p. 639; and U.S. Congress, Senate Committee on Small Business, *Small Business Reauthorization Act of 2000*, report to accompany S. 3121, 106th Cong., 2nd sess., September 27, 2000, S.Rept. 106-422 (Washington: GPO, 2000), p. 20.

[3] Henry Beale and Nicola Deas, "The HUBZone Program Report," Washington, DC: Microeconomic Applications, Inc., prepared for the SBA, Office of Advocacy, May 2008, p. i, at https://www.sba.gov/content/hubzone-program-report. HUBZone sole-source awards can be made only if the anticipated award price of the contract will not exceed $7.0 million for manufacturing contracts or $4.0 million for other contract opportunities and the contracting officer believes the award can be made at a fair and reasonable price. See 13 C.F.R. §126.612; 15 U.S.C. §657a(b)(2)(A)(i)-(iii) (statutory requirements); 48 C.F.R. §19.1306(a)(1)-(6) (increasing the price thresholds, among other things); Department of Defense, General Services Administration, and National Aeronautics and Space Administration, "Federal Acquisition Regulation: Inflation Adjustment of Acquisition-Related Thresholds," 75 *Federal Register* 53129, August 30, 2010; and Department of Defense, General Services Administration, and National Aeronautics and Space Administration, "Federal Acquisition Regulation: Inflation Adjustment of Acquisition-Related Thresholds," 80 *Federal Register* 38298, July 2, 2015.

[4] 41 U.S.C. §253(b)(1); and 41 U.S.C. §259(b).

[5] 15 U.S.C §657a(b)(3); and Henry Beale and Nicola Deas, "The HUBZone Program Report," Washington, DC: Microeconomic Applications, Inc., prepared for the SBA, Office of Advocacy, May 2008, p. i, at https://www.sba.gov/

In FY2018, the federal government awarded $9.8 billion to HUBZone-certified businesses. About $2.3 billion of that amount was awarded with a HUBZone preference ($2.1 billion through a HUBZone set-aside, $112.6 million through a HUBZone sole-source award, and $100.7 million through a HUBZone price-evaluation preference). About $1.8 billion was awarded to HUBZone-certified businesses in open competition with other firms. The remaining $5.7 billion was awarded with another small business preference (e.g., set aside and sole source awards for small business generally and for 8(a), women-owned, and service-disabled veteran-owned small businesses).[6]

The program's administrative cost is about $9.8 million annually.[7] The HUBZone program's administrative cost is about $8.4 million annually. The program received an appropriation of $3.0 million for FY2020 under P.L. 116-69, the Further Continuing Appropriations Act, 2020 (prorated through December 20, 2019), with the additional cost of administering the program provided by the SBA's appropriation for salaries and general administrative expenses.[8]

Congressional interest in the HUBZone program has increased in recent years, primarily due to U.S. Government Accountability Office (GAO) reports of fraud in the program and efforts by small businesses to ease HUBZone eligibility requirements.

This report

- examines arguments presented both for and against targeting assistance to geographic areas with specified characteristics as opposed to providing assistance to people or businesses with specified characteristics;
- assesses arguments presented both for and against the creation and continuation of the HUBZone program, starting with the arguments presented during consideration of P.L. 105-135, which authorized the program;
- discusses the HUBZone program's structure and operation, focusing on the definitions of HUBZone areas and HUBZone small businesses and the program's performance relative to federal contracting goals; and
- provides an analysis of the SBA's administration of the HUBZone program and the SBA's performance measures.

This report also examines HUBZone-related legislation, including

- P.L. 114-92, the National Defense Authorization Act for Fiscal Year 2016, which expanded the definition of a Base Realignment and Closure Act (BRAC) military base closure area to make it easier for businesses located in those areas to meet the HUBZone program's requirement that at least 35% of its employees reside in a HUBZone area. It also extended BRAC base closure area HUBZone eligibility from five years to not less than eight years, provided HUBZone eligibility to

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[6] U.S. General Services Administration (GSA), Federal Procurement Data System—Next Generation, July 5, 2019, at https://www.fpds.gov/fpdsng/.

[7] SBA, *FY2020 Congressional Budget Justification and FY2018 Annual Performance Report*, p. 16, at https://www.sba.gov/sites/default/files/2019-04/SBA%20FY%202020%20Congressional%20Justification_final%20508%20%204%2023%202019.pdf.

[8] Also, see U.S. Congress, House Committee on Conference, *Making Further Continuing Appropriations for the Department of Homeland Security for Fiscal Year 2019, and for other purposes*, conference report to accompany H.J.Res. 31, 116th Cong., 1st sess., February 13, 2019, H.Rept. 116-9 (Washington: GPO, 2019), p. 680.

qualified disaster areas, and added Native Hawaiian Organizations to the list of HUBZone eligible small business concerns.

- P.L. 115-91, the National Defense Authorization Act for Fiscal Year 2018, which included provisions from several bills introduced during the 115th Congress, including S. 929, the Invest in Rural Small Business Act of 2017, and H.R. 3294, the HUBZone Unification and Business Stability Act of 2017. Specifically, the act, among other provisions, allows small businesses that have HUBZone status on or before December 31, 2019, to retain that status from January 1, 2020, until the SBA prepares an updated online tool depicting HUBZone qualified areas (anticipated by the SBA to take place in December 2021). Once the new online tool (currently called the HUBZone map) is operational, the SBA must update it every five years for qualified census tracts and nonmetropolitan counties and when a change in status takes place for other HUBZone types (e.g., when an area becomes, or ceases to be, a redesignated area). The act also allows governors, starting on January 1, 2020, to petition the SBA each year to designate areas located in nonurban areas, with a population of 50,000 or fewer, and an average unemployment rate at least 120% of the national or state average, whichever is lower, as HUBZones; requires the SBA to process HUBZone certification applications with sufficient and complete documentation within 60 days of receipt; ensures that HUBZone-eligible BRAC areas receive HUBZone eligibility for a full eight years, beginning on the date they are designated a BRAC; and requires the SBA, not later than one year after enactment, to publish performance metrics measuring the HUBZone program's success in promoting economic development in economically distressed areas.

In addition, P.L. 114-187, the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA), includes a provision exempting Puerto Rico from the 20% population cap on qualified census tracts (QCTs) located in metropolitan statistical areas (MSAs) for 10 years, or until the date on which the Financial Oversight and Management Board for Puerto Rico, created by PROMESA, ceases to exist, whichever comes first.[9] The act also requires the SBA to implement a risk-based approach to requesting and verifying information from firms applying to be designated or recertified as a qualified HUBZone small business.

Several bills are also discussed that would increase the federal government's small business contracting goals. For example, during the 113th Congress, S. 259, the Assuring Contracting Equity Act of 2013, would have increased the federal government's 23% contracting goal for small businesses generally to 25%, the 5% contracting goals for small disadvantaged businesses

[9] Prior to enactment, the SBA's district office in Puerto Rico issued a press release (on June 16, 2016) announcing that the SBA would no longer apply the national 20% population cap on QCTs in MSAs. The SBA later confirmed that it had administratively eliminated the 20% population cap earlier in the year, but had not formally announced the action. SBA's legal justification for taking this action is contained in SBA, Office of General Council, Office of Procurement Law, "Memorandum from John W. Klein, Associate General Counsel for Procurement Law to Mariana Pardo, Director, HUBZone Program: HUBZone Designations," June 10, 2016. Also see SBA, "SBA Announces New Qualified HUBZones in Puerto Rico," at https://www.sba.gov/content/sba-announces-new-qualified-hubzones-puerto-rico. On October 23, 2017, the SBA announced that unless significant adverse comment is received by November 22, 2017, it would apply PROMESA's statutory language (which effectively re-instates the 20% population cap on QCTs located in MSAs and exempts Puerto Rico from the cap for 10 years, or until the date on which the Financial Oversight and Management Board for Puerto Rico ceases to exist, whichever comes first) on December 22, 2017. The SBA indicated that the statutory language "is specific, limited, and requires no interpretation." See SBA, "HUBZone and Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) Amendments," 82 *Federal Register* 48903, October 23, 2017.

and women-owned small businesses to 10%, and the 3% contracting goals for HUBZone-certified small businesses and service-disabled veteran-owned small businesses to 6%. The bill's provisions were reintroduced in both the House and Senate during the 114th Congress (H.R. 3175 and S. 1859) and the 115th Congress (H.R. 2362 and S. 1061). Also, H.R. 273, the Minority Small Business Enhancement Act of 2015, would have increased the federal government's 23% contracting goal for small businesses generally to 25% and the 5% contracting goals for small disadvantaged businesses and women-owned small businesses to 10%.

Targeting Assistance to Geographic Areas

The HUBZone program was authorized by P.L. 105-135.[10] Senator Christopher S. "Kit" Bond, the legislation's sponsor, described it as a "jobs bill and a welfare-to-work bill" designed to "create realistic opportunities for moving people off of welfare and into meaningful jobs" in "inner cities and rural counties that have low household incomes, high unemployment, and whose communities have suffered from a lack of investment."[11] Its enactment was part of a broader debate that had been under way since the late 1970s concerning whether the federal government should target assistance to geographic areas with specified characteristics as opposed to providing assistance to people or businesses with specified characteristics.

Discussion

The idea that targeting government assistance to geographic areas with specified characteristics, as opposed to targeting government assistance to people or businesses with specified characteristics, would result in more effective outcomes had its origins in a British experiment in urban revitalization started during the late 1970s. In 1978, Sir Geoffrey Howe, a Conservative Member of Parliament, argued for the establishment of market-based enterprise zones that would provide government regulatory and tax relief in economically distressed areas as a means to encourage entrepreneurs "to pursue profit with minimum governmental restrictions."[12] With the support of Prime Minister Margaret Thatcher's Conservative government (1979-1990), by the mid-1980s, more than two dozen enterprise zones were operating in England. Evaluations of the British enterprise zones' potential for having a positive effect on the long-term economic growth of economically distressed areas suggested that providing tax incentives and implementing regulatory relief in those areas were "useful but not decisive economic development tools for distressed communities."[13]

In the United States, the idea of targeting regulatory and tax relief to economically distressed places appealed to some liberals who had become frustrated by the lack of progress some

[10] The SBA officially established the HUBZone program on March 22, 1999, when it began to accept applications from businesses interested in participating in the program. The SBA certified its first HUBZone business on March 24, 1999, and issued the first HUBZone contract on April 8, 1999. See U.S. Congress, Senate Committee on Small Business, *Small Business Reauthorization Act of 2000*, report to accompany S. 3121, 106th Cong., 2nd sess., September 27, 2000, S.Rept. 106-422 (Washington: GPO, 2000), p. 20.

[11] U.S. Congress, Senate Committee on Small Business, *Small Business Reauthorization Act of 1997*, report to accompany S. 1139, 105th Cong., 1st sess., August 19, 1997, S.Rept. 105-62 (Washington: GPO, 1997), p. 25.

[12] Marilyn Marks Rubin, "Can Reorchestration of Historical Themes Reinvent Government? A Case Study of the Empowerment Zones and Enterprise Communities Act of 1993," *Public Administration Review*, vol. 54, no. 2 (March/April 1994), p. 162. Note: Sir Peter Geoffrey Hall, the Bartlett Professor of Planning and Regeneration at the Bartlett School of Architecture and Planning, University College London, is often credited for developing the concept of empowerment zones.

[13] Ibid.

economically distressed communities had experienced under conventional government assistance programs, such as federal grant-in-aid programs. They tended to view the idea as a supplement to existing government assistance programs. Some conservatives also supported the idea of providing additional regulatory and tax relief to geographic areas because it generally aligned with their views on reducing government regulation and taxes. They tended to view this approach as a replacement, as opposed to a supplement, for existing government assistance programs.[14] As a result, support for targeting federal assistance to economically distressed places came from a diverse group of individuals and organizations that were often on opposing sides in other issue areas. Some of its leading proponents were the Congressional Black Caucus; the National Urban League; the National League of Cities; the National Association for the Advancement of Colored People; President Ronald Reagan; Republican Representative Jack Kemp, who introduced the first enterprise zone bill in Congress in May 1980 (H.R. 7240, the Urban Jobs and Enterprise Zone Act of 1980); and Democratic Representative Robert Garcia, who cosponsored with Representative Kemp H.R. 3824, the Urban Jobs and Enterprise Zone Act of 1981.[15]

Opponents noted that targeting government assistance, in this case regulatory and tax relief, to economically distressed places would "provide incentives in designated areas, regardless of the nature of the industry which would benefit from the incentives."[16] They argued that it would be more efficient and cost effective to target federal assistance to businesses that offer primarily high-wage, full-time jobs with benefits and have relatively high multiplier effects on job creation than to offer the same benefits to all businesses, including those that offer primarily low-wage, part-time jobs with few or no benefits and have relatively low multiplier effects on job creation.[17]

Others opposed the idea because they viewed it as a partisan extension of supply-side economics.[18] Still others, including the National Federation of Independent Businesses, an organization representing the interests of the nation's small businesses, were not convinced that providing "marginal rate reductions or marginal reductions in taxes" would "stimulate the entry of new businesses into depressed areas."[19] Further, some economists argued that it would be more efficient to let the private market determine where businesses locate rather than to have the government enact policies that encourage businesses to locate, or relocate, in areas they would otherwise avoid. In this view, "the locational diversion of economic activity reduces or may outweigh gains from the creation of economic activity."[20]

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[14] Stuart M. Butler, *Enterprise Zones: Greenlining the Inner Cities* (New York: Universe Books, 1981).

[15] Ibid; U.S. Congress, House Committee on Ways and Means, *The Enterprise Zone Tax Act of 1982*, Message from the President of the United States transmitting proposed legislation entitled, "The Enterprise Zone Tax Act of 1982", 97th Cong., 2nd sess., March 23, 1982, H.Doc. 97-157 (Washington: GPO, 1982), pp. 1-5; and U.S. Congress, House Committee on Banking, Finance, and Urban Affairs, Subcommittee on the City, *Urban Revitalization and Industrial Policy*, 96th Cong., 2nd sess., September 17, 1980, Serial No. 96-72 (Washington: GPO, 1980), pp. 205-224.

[16] U.S. Congress, House Committee on Banking, Finance, and Urban Affairs, Subcommittee on the City, *Urban Revitalization and Industrial Policy*, 96th Cong., 2nd sess., September 17, 1980, Serial No. 96-72 (Washington: GPO, 1980), p. 283.

[17] Ibid.

[18] Marilyn Marks Rubin, "Can Reorchestration of Historical Themes Reinvent Government? A Case Study of the Empowerment Zones and Enterprise Communities Act of 1993," *Public Administration Review*, vol. 54, no. 2 (March/April 1994), p. 163.

[19] U.S. Congress, House Committee on Small Business, Subcommittee on Tax, Access to Equity Capital and Business Opportunities, *Job Creation and the Revitalization of Small Business*, 97th Cong., 1st sess., September 15, 1981 (Washington: GPO, 1981), pp. 22, 23.

[20] Herbert Grubel, "Review of Enterprise Zones: Greenlining the Inner Cities, by Stuart M. Butler," *Journal of Economic Literature*, vol. XX (December 1982), p. 1616.

These disagreements may have had a role in delaying the enactment of the first fully functional federal enterprise zone program until 1993 (P.L. 103-66, the Omnibus Budget Reconciliation Act of 1993).[21] In the meantime, 37 states and the District of Columbia had initiated their own enterprise zone programs.[22] Evaluations of their effect on job creation and the economic status of the targeted distressed areas "provided conflicting conclusions, with some finding little or no program-related impacts, and others finding gains in the zones associated with the enterprise zone incentives."[23] Evaluations of federal enterprise zones would later report similarly mixed findings.[24]

The Debate over HUBZones

The federal enterprise zone program's enactment in 1993 established a precedent for the enactment of other programs, such as the HUBZone program, that target federal assistance, in this case government contracts, to places with specified characteristics. For example, the Senate Committee on Small Business's report accompanying the HUBZone program's authorizing legislation in 1997 presented many of the same arguments for adopting the HUBZone program that had been put forth for adopting the federal enterprise zone program:

> Creating new jobs in economically distressed areas has been the greatest challenge for many of our nation's governors, mayors, and community leaders. The trend is for business to locate in areas where there are customers and a skilled workforce. Asking a business to locate in a distressed area often seems counter to its potential to be successful. But without businesses in these communities, we don't create jobs, and without sources of new jobs, we are unlikely to have a successful revitalization effort.
>
> The HUBZone program attempts to utilize a valuable government resource, a government contract, and make it available to small businesses who agree in return to locate in an economically distressed area and employ people from these areas…. Contracts to small businesses in HUBZones can translate into thousands of job opportunities for persons who are unemployed or underemployed.[25]

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[21] In 1987, Title VII of P.L. 100-242, the Housing and Community Development Act, authorized the U.S. Department of Housing and Urban Development (HUD) to coordinate the community development block grant, urban development action grant, and other HUD programs and to provide the waiver or modification of housing and community development rules in up to 100 HUD-designated enterprise zone communities. No enterprise zone designations were subsequently made. See Marilyn Marks Rubin, "Can Reorchestration of Historical Themes Reinvent Government? A Case Study of the Empowerment Zones and Enterprise Communities Act of 1993," *Public Administration Review*, vol. 54, no. 2 (March/April 1994), p. 162.

[22] Ibid.; and Sarah F. Liebschutz, "Empowerment Zones and Enterprise Communities: Reinventing Federalism for Distressed Communities," *Publius: The Journal of Federalism*, vol. 25, no. 3 (Summer 1995), p. 127.

[23] Marilyn Marks Rubin, "Can Reorchestration of Historical Themes Reinvent Government? A Case Study of the Empowerment Zones and Enterprise Communities Act of 1993," *Public Administration Review*, vol. 54, no. 2 (March/April 1994), p. 164. Also see Sarah F. Liebschutz, "Empowerment Zones and Enterprise Communities: Reinventing Federalism for Distressed Communities," *Publius: The Journal of Federalism*, vol. 25, no. 3 (summer 1995), p. 128; and Edward L. Glaeser and Joshua D. Gottlieb, "The Economics of Place-Making Policies," *Brookings Papers on Economic Activity* (spring 2008), p. 157.

[24] U.S. Government Accountability Office (GAO), *Community Development: Federal Revitalization Programs Are Being Implemented, but Data on the Use of Tax Benefits Are Limited*, GAO-04-306, March 5, 2004, at http://www.gao.gov/new.items/d04306.pdf; GAO, *Empowerment Zone and Enterprise Community Program: Improvements Occurred in Communities, but the Effect of the Program Is Unclear*, GAO-06-727, September 22, 2006, at http://www.gao.gov/new.items/d06727.pdf; and GAO, *Revitalization Programs: Empowerment Zones, Enterprise Communities, and Renewal Communities*, GAO-10-464R, March 12, 2010, at http://www.gao.gov/new.items/d10464r.pdf.

[25] U.S. Congress, Senate Committee on Small Business, *Small Business Reauthorization Act of 1997*, report to

HUBZone opponents expressed many of the same arguments that were raised in opposition to federal enterprise zones. For example, some Members opposed contract set-asides because they "unfairly discriminate against more efficient producers" and argued that "lower taxes, fewer mandates and freer markets are what stimulate the growth of small business."[26] Others contended that the experiences under enterprise zones suggested that HUBZones would have, at best, a limited impact on the targeted area's economic prospects:

> the record of enterprise zones demonstrates that businesses that locate in an area because of tax breaks or other artificial inducements (such as HUBZone contract preferences), instead of genuine competitive advantages, generally prove not to be sustainable…. Thus, the incentives generally go to businesses that would have located in and hired from the target area anyway…. Therefore, we should be realistic about the impact the HUBZone legislation will have on business relocation decisions.[27]

HUBZone critics also argued that the program would compete with, and potentially diminish the effectiveness of, the SBA's Minority Small Business and Capital Ownership Development 8(a) program.[28]

The 8(a) program provides participating small businesses with training, technical assistance, and contracting opportunities in the form of set-asides and sole-source awards. Eligibility for the 8(a) program is generally limited to small businesses "unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States" that demonstrate "potential for success."[29] Small businesses owned by Indian tribes, Alaska native corporations, native Hawaiian organizations, and community development corporations are also eligible for the 8(a) program under somewhat different terms. In FY2018, about 6,000 firms participated in the 8(a) program and over 3,700 contracts were awarded to 8(a) firms, totaling more than $29.5 billion.

Others argued that the HUBZone self-certification process "while laudable in its effort to reduce certification costs and delays, invites inadvertent or deliberate abuses."[30]

As will be discussed in greater detail, the SBA's administration of the HUBZone program and the program's effectiveness in assisting economically distressed areas has been criticized. For example, GAO has argued that the program is subject to fraud and abuse and has recommended that the SBA "take additional actions to certify and monitor HUBZone firms as well as to assess the results of the HUBZone program."[31]

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accompany S. 1139, 105th Cong., 1st sess., August 19, 1997, S.Rept. 105-62 (Washington: GPO, 1997), p. 26.

[26] U.S. Congress, Senate Committee on Small Business, *S. 208, The HUBZone Act of 1997*, 105th Cong., 1st sess., February 27, 1997, S.Hrg. 105-64 (Washington: GPO, 1997), p. 68.

[27] Ibid., p. 36.

[28] U.S. Congress, Senate Committee on Small Business, *S. 1574, The HUBZone Act of 1996: Revitalizing Inner Cities and Rural America*, 104th Cong., 2nd sess., March 21, 1996, S.Hrg. 104-480 (Washington: GPO, 1996), p. 17; U.S. Congress, Senate Committee on Small Business, *S. 208, The HUBZone Act of 1997*, 105th Cong., 1st sess., February 27, 1997, S.Hrg. 105-64 (Washington: GPO, 1997), p. 15; and U.S. Congress, Senate Committee on Small Business, *S. 208, The HUBZone Act of 1997*, 105th Cong., 1st sess., April 10, 1997, S.Hrg. 105-103 (Washington: GPO, 1997), pp. 20, 23, 26, 27, 33, 35, 77, 147, 149, 153-157.

[29] 13 C.F.R. §124.101.

[30] U.S. Congress, Senate Committee on Small Business, *S. 208, The HUBZone Act of 1997*, 105th Cong., 1st sess., February 27, 1997, S.Hrg. 105-64 (Washington: GPO, 1997), p. 36.

[31] GAO, *HUBZone Program: Fraud and Abuse Identified in Four Metropolitan Areas*, GAO-09-440, March 25, 2009, p. 5, at http://www.gao.gov/new.items/d09440.pdf. Also see GAO, *Small Business Administration: Undercover Tests Show HUBZone Program Remains Vulnerable to Fraud and Abuse*, GAO-10-759, June 25, 2010, pp. 2, 4, 5, at

Several Members of Congress have also questioned the program's effectiveness. For example, in 2009, Representative Nydia M. Velázquez argued that

> When first introduced, the HUBZone program promised to create opportunities for small businesses in low-income communities. It was designed to do this by helping entrepreneurs access the Federal marketplace. In theory, the benefits will be twofold; HUBZones will not only bolster the small business community, but will also breathe new life into struggling neighborhoods. However, the program has been undermined by chronic underfunding, inherent program flaws and sloppy management. Instead of being incubators for growth and development, HUBZones have become breeding grounds for fraud and abuse.[32]

HUBZone Areas Defined

Five HUBZone types (or classes) currently exist:

- qualified census tracts (QCTs),
- qualified nonmetropolitan counties,
- qualified Indian reservations/Indian Country,
- military bases closed under the BRAC, and
- qualified disaster areas.[33]

In addition, QCTs and qualified nonmetropolitan counties that lose their eligibility may temporarily retain their eligibility by becoming redesignated areas. Also, P.L. 115-91, the National Defense Authorization Act for Fiscal Year 2018, authorizes governors, starting on January 1, 2020, to petition the SBA annually to grant HUBZone eligibility to designated covered areas in their state (or territory) which are located outside of an urbanized area, have a population of 50,000 or fewer, and have an unemployment rate at least 120% of the unemployment rate for the nation or state in which it is located, whichever is less.[34]

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http://www.gao.gov/new.items/d10759.pdf; GAO, *HUBZone Program: Fraud and Abuse Identified in Four Metropolitan Areas* (congressional testimony), GAO-09-519T, March 25, 2009, pp. 2-9, at http://www.gao.gov/new.items/d09519t.pdf; and GAO, *Small Business Administration: Status of Efforts to Address Previous Recommendations on the HUBZone Program* (congressional testimony), GAO-09-532T, March 25, 2009, pp. 1-3, at http://www.gao.gov/new.items/d09532t.pdf.

[32] U.S. Congress, House Committee on Small Business, *Full Committee Hearing on Oversight of the Small Business Administration and Its Programs*, 111th Cong., 1st sess., March 25, 2009, Small Business Committee Doc. 111-012 (Washington: GPO, 2009), p. 1.

[33] P.L. 105-135, the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act of 1997) designated qualified census tracts, qualified counties (originally only in nonmetropolitan areas), and qualified Indian reservation/Indian Country (originally lands within the external boundaries of an Indian reservation) as eligible. P.L. 108-447, the Consolidated Appropriations Act, 2005, provided HUBZone eligibility for five years to bases closed under the Base Realignment and Closure Act (BRAC). P.L. 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, provided eligibility to difficult development areas outside of the continental United States (DDAs). P.L. 114-92, the National Defense Authorization Act for Fiscal Year 2016, provided eligibility to qualified disaster areas. P.L. 115-91, the National Defense Authorization Act for Fiscal Year 2018, included DDAs in the definition of qualified nonmetropolitan counties.

[34] P.L. 115-91, the National Defense Authorization Act for Fiscal Year 2018, authorizes governors, starting on January 1, 2020, to submit no more than 1 petition each calendar year to the SBA to provide HUBZone eligibility to designated covered areas that are (1) located outside of an urbanized area as determined by the Bureau of the Census; (2) have a population of 50,000 or fewer; and (3) has an average unemployment rate of at least 120% of the average unemployment rate for the nation or the state (or territory) in which the covered area is located, whichever is less, based on the most recent data available from the American Community Survey conducted by the Bureau of the Census. The total number of covered areas included in the petition may not exceed 10% of the total number of covered areas in the

Qualified Census Tracts

The term *qualified census tract* (QCT) has the meaning given that term in Section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986. That section of the Internal Revenue code refers to QCTs as determined by the Department of Housing and Urban Development (HUD) for its low-income housing tax credit program and has three subparts:

> (I) In general
>
> The term "qualified census tract" means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.
>
> (II) Limit on MSA's designated
>
> The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.
>
> (III) Determination of areas
>
> For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.[35]

In MSAs in which more than 20% of the population qualifies, HUD orders the census tracts in that MSA from the highest percentage of eligible households to the lowest. HUD then designates the census tracts with the highest percentage of eligible households as qualified until the 20% population limit is exceeded. If a census tract is excluded because it raises the percentage above 20%, then subsequent census tracts are considered to determine if a census tract with a smaller population could be included without exceeding the 20% limit.[36]

As mentioned earlier, P.L. 114-187, the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA) exempts Puerto Rico from the 20% population cap for 10 years, or until the date on which the Financial Oversight and Management Board for Puerto Rico ceases to exist, whichever comes first.[37]

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state. If the petition is approved, the governor must submit data to the SBA, at least once a year, certifying that each designated covered area continues to meet these requirements. In reviewing the petition, the SBA may consider the potential for job creation and investment in the covered area, the demonstrated interest by small businesses in the covered area to be included in the HUBZone program, how state and local government officials have incorporated the covered area into an economic development strategy, and if the covered area was previously a HUBZone the impact on the covered area if the SBA did not approve the petition.

[35] 26 U.S.C. §42(d)(5)(B)(ii)(I)-(III).

[36] HUD, "Qualified Census Tracts and Difficult Development Areas," at http://www.huduser.org/portal/datasets/qct/qct99home.html.

[37] The SBA administratively waived the 20% population cap on QCTs in MSAs in 2016. On October 23, 2017, the SBA announced in the *Federal Register* that unless significant adverse comment is received by November 22, 2017, it would apply PROMESA's statutory language (which effectively re-instates the 20% population cap on QCTs located in MSAs and exempts Puerto Rico from the cap for 10 years, or until the date on which the Financial Oversight and Management Board for Puerto Rico ceases to exist, whichever comes first) on December 22, 2017. The SBA indicated that the statutory language "is specific, limited, and requires no interpretation." See SBA, "HUBZone and Puerto Rico

The HUBZone map indicates that, as of June 1, 2018, 20.2% of all census tracts (14,980 of 74,002) had QCT status.[38]

The SBA's most recent update of QCT eligibility was released in January 2018.[39] The SBA has announced that the next update of QCT status will not take place until December 2021. Those designations will then be updated every five years thereafter, as required by P.L. 115-91, the National Defense Authorization Act for Fiscal Year 2018.[40]

Qualified Nonmetropolitan Counties

A qualified nonmetropolitan county is any county that is not located in a metropolitan statistical area as defined in Section 143(k)(2)(B) of the Internal Revenue Code of 1986[41] and in which

- the median household income is less than 80% of the nonmetropolitan state median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce;
- the unemployment rate is not less than 140% of the average unemployment rate for the United States or for the state in which such county is located, whichever is less, based on the most recent data available from the Secretary of Labor;[42] or

Oversight, Management, and Economic Stability Act (PROMESA) Amendments," 82 *Federal Register* 48903, October 23, 2017.

[38] SBA, Office of Congressional and Legislative Affairs, "Correspondence with the author," June 4, 2018. The number of HUBZone-qualified census tracts was 13,635 of 73,790 in 2014, 13,795 of 73,793 in 2015, 16,368 of 74,130 in 2016, and 17,201 of 74,002 in 2017. The decline in QCTs from the 2017 to 2018 is primarily due to the reinstatement of the 20% population cap for MSAs (other than in Puerto Rico).

[39] The SBA updated census tract and nonmetropolitan county eligibility using the latest data received prior to December 12, 2017 (P.L. 115-91's enactment date).

[40] SBA, "The HUBZone Maps," at https://www.sba.gov/content/hubzone-maps.

Prior to 2010, data required for QCT eligibility purposes were only available from the decennial census long form. As a result, QCTs changed relatively infrequently, typically as new economic data from each decennial census became available or when the Census Bureau undertook a new delineation of census tracts. However, for the 2010 decennial census, the long form was replaced by the American Community Survey (ACS), an ongoing mailed survey of about 250,000 households per month that gathers largely the same income data as the long form. In 2012, HUD used that data to determine the eligibility status of census tracts for the low-income housing tax credit program. The SBA applied the changes in QCT status to the HUBZone program later that same year. HUD initially announced that it would update the eligibility status of census tracts based on the release of new ACS economic data every five years but later decided to update the eligibility status of census tracts annually. The increased frequency of QCT status reviews led to increased anxiety among some small business owners and their advocates who worried that more frequent QCT reviews could adversely affect some small businesses' HUBZone eligibility. P.L. 115-91 addressed this issue by, among other provisions, allowing small businesses with QCT status on or before December 31, 2019, to retain that status from January 1, 2020, until the SBA prepares an updated online tool depicting HUBZone qualified areas (anticipated by the SBA to take place in December 2021) and by requiring the SBA to update QCT status every five years once the new online tool is operational instead of annually. See U.S. Census Bureau, "American Community Survey: When to use 1-year, 3-year, or 5-year estimates," at https://www.census.gov/programs-surveys/acs/guidance/estimates.html; SBA, "Small Business HUBZone Program; Government Contracting Programs," 76 *Federal Register* 43572, July 21, 2011; HUD, "Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2012," 76 *Federal Register* 66745, October 27, 2011; and HUD, "Statutorily Mandated Designation of Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986," 77 *Federal Register* 23735-23740, April 20, 2012.

[41] Section 143(k)(2)(B) of the Internal Revenue Code of 1986 indicates that "the term 'metropolitan statistical area' includes the area defined as such by the Secretary of Commerce."

[42] 13 C.F.R. §126.103.

- the county has been designated by the Secretary of HUD as a difficult development area (DDA).[43]

As of June 1, 2018, about 18.9% (613) of the nation's 3,242 counties had qualified nonmetropolitan county status (30.6% of the nation's 2,006 nonmetropolitan counties).[44] This count includes 21 counties qualified as eligible solely due to their status as a DDA.

The SBA's most recent update of nonmetropolitan county eligibility was released in January 2018. The SBA has announced that the next update of nonmetropolitan county eligibility will not take place until December 2021. Those designations will then be updated every five years thereafter, as required by P.L. 115-91.[45]

As will be discussed, Congress created redesignated areas to delay the loss of HUBZone status for census tracts and nonmetropolitan counties that lose HUBZone eligibility.

Qualified Indian Lands

P.L. 105-135, the HUBZone Act of 1997, provided HUBZone eligibility to "lands within the external boundaries of an Indian reservation." Since then, the term *Indian reservation* has been clarified and expanded to include

- Indian trust lands and other lands covered under the term *Indian Country* as used by the Bureau of Indian Affairs,
- portions of the state of Oklahoma designated as former Indian reservations by the Internal Revenue Service (Oklahoma tribal statistical areas), and
- Alaska native village statistical areas.[46]

[43] P.L. 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA), provided HUBZone eligibility to difficult development areas (DDAs) within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous states. These areas are designated annually, typically in September or October, by the Secretary of HUD in accordance with Section 42(d)(5)(B)(iii) of the Internal Revenue Code, which applies to HUD's low-income housing tax credit program. This section of the Internal Revenue Code defines DDAs as "areas designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income." In making this determination, HUD calculates a ratio for each metropolitan area and nonmetropolitan county of the fair market rent (based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment) to the monthly low-income housing tax credit-based rent limit, which was calculated as three-twelfths of 30% of 120% of the area's very low-income households (which is based on 50% of area's median gross income). These areas may not exceed 20% of the population of a metropolitan statistical area or of a nonmetropolitan area. As of June 1, 2018, there were 39 HUBZone DDA counties: 21 were HUBZone eligible solely due to their DDA status, 14 were HUBZone eligible based on both their unemployment and DDA status, and 4 were HUBZone eligible based on their income, unemployment, and DDA status. See HUD, "Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2010," 74 *Federal Register* 51305, October 6, 2009; and SBA, Office of Congressional and Legislative Affairs, "Correspondence with the author," June 4, 2018.

[44] SBA, Office of Congressional and Legislative Affairs, "Correspondence with the author," June 4, 2018. This count does not include redesignated nonmetropolitan counties, which are discussed later.

[45] Prior to P.L. 115-91, nonmetropolitan county status was updated as many as three times a year, with determinations based on income typically taking place in January, determinations based on unemployment typically taking place in May, and determinations based on DDA status typically taking place in November.

[46] Henry Beale and Nicola Deas, "The HUBZone Program Report," Washington, DC: Microeconomic Applications, Inc., prepared for the SBA, Office of Advocacy, May 2008, p. 160, at https://www.sba.gov/content/hubzone-program-report.

As of June 1, 2018, there were 619 HUBZone-qualified Indian lands.[47] A private firm's analysis of Indian reservations' economic characteristics conducted on behalf of the SBA indicated that

> for the most part—and particularly in states where reservations are numerous and extensive—mean income of reservations is far below state levels, and unemployment rates and poverty rates are far above state levels. There are some interesting exceptions, however, where reservations are basically on a par with the states they are in. Examples include Osage reservation in Oklahoma and reservations in Connecticut, Rhode Island, and Michigan. The factors at work here may be casinos and oil.[48]

In accordance with P.L. 115-91, all HUBZone-qualified Indian lands designated on or before December 31, 2019, retain that status from January 1, 2020, until the SBA prepares an updated online tool depicting HUBZone qualified areas (anticipated by the SBA to take place in December 2021). The act does not address when the SBA is required to update its new online tool to reflect changes in the status of HUBZone-qualified Indian lands. Presumably, the online tool would be updated immediately to reflect any change in that status.

Military Bases Closed Under BRAC

P.L. 108-447, the Consolidated Appropriations Act, 2005, provided HUBZone eligibility for five years to "lands within the external boundaries of a military installation closed through a privatization process" under the authority of P.L. 101-510, the Defense Base Closure and Realignment Act of 1990 (BRAC—Title XXIX of the National Defense Authorization Act for Fiscal Year 1991); title II of P.L. 100-526, the Defense Authorization Amendments and Base Closure and Realignment Act; and any other provision of law authorizing military base closures or redevelopment.[49] The military base's HUBZone eligibility commences on the effective date of the initial law (December 8, 2004) if the military base was already closed at that time or on the date of formal closure if the military base was still operational at that time.

During the 113th and 114th Congresses, several bills were introduced to make it easier for businesses located in a BRAC military base closure area to meet the HUBZone requirement of having at least 35% of their employees reside within a HUBZone.[50] As mentioned earlier, P.L.

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[47] SBA, Office of Congressional and Legislative Affairs, "Correspondence with the author," June 4, 2018. There were 659 qualified Indian reservations, Oklahoma tribal statistical areas, and Alaska Native village statistical areas on May 1, 2010, 668 on May 1, 2013, and 593 on October 3, 2016.

[48] Henry Beale and Nicola Deas, "The HUBZone Program Report," Washington, DC: Microeconomic Applications, Inc., prepared for the SBA, Office of Advocacy, May 2008, p. 163, at https://www.sba.gov/content/hubzone-program-report.

[49] "Base closure area means lands within the external boundaries of a military installation that were closed through a privatization process under the authority of: (1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of P.L. 101-510; 10 U.S.C. 2687 note); (2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (P.L. 100-526; 10 U.S.C. 2687 note); (3) 10 U.S.C. 2687; or (4) Any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use." See 13 C.F.R. §126.103.

[50] During the 113th Congress, H.R. 489, the HUBZone Expansion Act of 2013, and its companion bill in the Senate (S. 206) would have expanded the area eligible for HUBZone status as a result of a BRAC military base closure to include a military installation's municipality, county, census tract, or contiguous census tract having a total population of no more than 50,000 as determined by the most recent decennial census. S. 2410, the Carl Levin National Defense Authorization Act for Fiscal Year 2015, included a provision that would have allowed businesses to count employees residing in the base closure area and (1) the census tract in which the base closure HUBZone is wholly contained, (2) any census tract that intersects the boundaries of the base closure HUBZone, and (3) any census tract contiguous with those census tracts to meet the 35% employee residence threshold. The bill also would have extended HUBZone

114-92 contains such a provision. The act expands BRAC HUBZone eligibility to census tracts and nonmetropolitan counties that (1) contain a BRAC base closure area, (2) intersect with a BRAC base closure area, (3) are contiguous with a BRAC base closure area, or (4) are contiguous to any census tract or nonmetropolitan county described in (1) through (3). The act also extended HUBZone eligibility for BRAC base closure areas from five years to at least eight years.[51]

As of June 1, 2018, there were 125 HUBZone-qualified base closure areas.[52] In accordance with P.L. 115-91, all HUBZone-qualified base closure areas designated on or before December 31, 2019, retain that status from January 1, 2020, until the SBA prepares an updated online tool depicting HUBZone qualified areas (anticipated by the SBA to take place in December 2021). The act also requires the SBA to update its new online tool immediately after an area is designated as a HUBZone-qualified base closure area to reflect its change in status.

Qualified Disaster Areas

P.L. 114-92 provided HUBZone eligibility for qualified disaster areas, defined as "any census tract or nonmetropolitan county for which the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or located in an area in which a catastrophic incident has occurred (on or after the date of enactment) if such census tract or nonmetropolitan county ceased to be qualified [as a HUBZone] ... during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred and ending 2 years after such date."[53]

However, the following exceptions apply: (1) in the case of a major presidentially-declared disaster, such census tract or nonmetropolitan county may be designated a qualified disaster area only during the 5-year period beginning on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county is located; and (2) in the case of a catastrophic incident, such census tract or nonmetropolitan county may be designated a qualified disaster area only during the 10-year period beginning on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan area is located.[54]

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eligibility for BRAC base closure areas from five years to eight years. During the 114th Congress, the HUBZone provisions included in S. 2410 were reintroduced as S. 1266, the HUBZone Expansion Act of 2015. S. 1292, the HUBZone Revitalization Act of 2015 (later included in the Senate-passed version of H.R. 1735), included the provisions in S. 1266 and would have provided qualified disaster areas HUBZone eligibility for 5 years if the President has declared the qualified area a major disaster and 10 years if a catastrophic incident had occurred in the qualified area. On May 15, 2015, the House passed H.R. 1735, the National Defense Authorization Act for Fiscal Year 2016. It included a provision to expand the area that can be used by businesses located in a BRAC base closure area to meet the HUBZone program's 35% employee residence threshold to include lands within 25 miles of the external boundaries of the closed military installation, excluding any lands that are not within a qualified nonmetropolitan county. It would have also extended HUBZone eligibility for BRAC base closure areas from five years to at least eight years.

[51] If the BRAC base closure area was treated as a HUBZone at any time after 2010, the area retains HUBZone eligibility until the SBA Administrator makes a final determination concerning the census tract or nonmetropolitan area's eligibility for the HUBZone program after the 2020 decennial census.

[52] SBA, Office of Congressional and Legislative Affairs, "Correspondence with the author," June 4, 2018. There were 123 HUBZone-qualified base closure areas as of May 1, 2013, 107 as of May 1, 2014, 100 as of May 7, 2015, and 100 as of May 1, 2016.

[53] P.L. 114-92, the National Defense Authorization Act for Fiscal Year 2016, Section 866. Modifications to Requirements for Qualified HUBZone Small Business Concerns Located in a Base Closure Area.

[54] SBA, "HUBZone and National Defense Authorization Act for Fiscal Year 2016 Amendments," 81 *Federal Register* 51314, August 4, 2016.

As of June 1, 2018, there were eight designated qualified disaster areas. In accordance with P.L. 115-91, all qualified disaster areas designated on or before December 31, 2019, retain that status from January 1, 2020, until the SBA prepares an updated online tool depicting HUBZone qualified areas (anticipated by the SBA to take place in December 2021). The act also requires the SBA to update its new online tool immediately after an area is designated as a qualified disaster area to reflect its change in status.

Redesignated Areas

One of the implicit goals of the HUBZone program is to improve the economic standing of the geographic areas receiving assistance so they are no longer economically distressed areas. As a result, it could be argued that it is a program success when a QCT or a qualified nonmetropolitan county loses its HUBZone status when new economic data are published. However, because small businesses "that locate to a HUBZone may lose their eligibility in only one year due to changes in such data" and concerned that some HUBZone areas could "shift in and out of eligibility year after year," Congress included a provision in P.L. 106-554, the HUBZones in Native America Act of 2000 (Title VI, the Consolidated Appropriations Act, 2001), to address this issue.[55] The provision provided census tracts and nonmetropolitan counties that lose HUBZone eligibility an automatic extension "for the 3-year period following the date on which the census tract or nonmetropolitan county ceased to be so qualified."[56] The act labeled these census tracts and nonmetropolitan counties as *redesignated areas*.

As of June 1, 2018, there were 221 redesignated nonmetropolitan counties and 5,174 redesignated census tracts.[57] In accordance with P.L. 115-91, all redesignated areas on or before December 31, 2019, retain that status from January 1, 2020, until the SBA prepares an updated online tool depicting HUBZone qualified areas (anticipated by the SBA to take place in December 2021). The act also requires the SBA to update its new online tool immediately after an area becomes, or ceases to be, a redesignated area to reflect its change in status.

Overall, as of June 1, 2018, 834 of the nation's 3,242 counties (about 25.7%) had HUBZone status, either as a qualified nonmetropolitan county, a DDA, or a redesignated nonmetropolitan county and 20,154 of the nation's 74,002 census tracts (about 27.2%) had HUBZone status, either as a QCT or as a redesignated QCT.[58]

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[55] SBA, "Small Business Size Regulations; Government Contracting Programs; HUBZone Program," 67 *Federal Register* 3828, January 28, 2002.

[56] P.L. 106-554, the HUBZones in Native America Act of 2000 (Title VI, the Consolidated Appropriations Act, 2001).

[57] There were 326 HUBZone redesignated nonmetropolitan counties as of May 1, 2013, 250 as of May 1, 2014, 196 as of May 1, 2015, 200 as of May 1, 2016, and 218 as of July 1, 2017. There were 1,251 redesignated QCTs as of May 1, 2013, 1,251 as of May 1, 2014, 2,290 as of May 1, 2015, 1,845 as of May 1, 2016, and 2,257 as of January 1, 2017.

[58] During the 114th Congress H.R. 5250, the Growing and Reviving Rural Economies Through Transitioning HUBZone Redesignation Act of 2016, and S. 2838, the Small Business Transforming America's Regions Act of 2016, would have extended the eligibility of redesignated HUBZones to seven years from three years. During the 115th Congress, H.R. 2013, the Growing and Reviving Rural Economies Through Transitioning HUBZone Redesignation Act of 2017, and S. 690, the HUBZone Investment Protection Act, would have extended the eligibility of redesignated HUBZones to seven years from three years; H.R. 2592, the Expanding the Impact of the HUBZone Program Act of 2017, would have extended HUBZone eligibility to not more than 10 years; and H.R. 3294, the HUBZone Unification and Business Stability Act of 2017, would have provided HUBZone eligibility for at least five years beginning on January 1, 2020.

HUBZone Businesses Defined

Firms must be certified by the SBA to participate in the HUBZone program. **Table 1** indicates the number of HUBZone-certified small businesses listed in the SBA's Dynamic Small Business Search database for selected dates from 2010 to 2018. The SBA's database contains information provided by small businesses interested in obtaining federal contracts when they registered in the federal System for Award Management (SAM).

The data indicate that the number of HUBZone firms increased from May 2010 to May 2011 and then generally declined until mid-2015, with much of the reduction due to the previously mentioned expiration of grandfathered redesignated areas on October 1, 2011. Since then, the number of HUBZone firms has increased somewhat.

As of November 27, 2019, the SBA's Dynamic Small Business Search database included 7,183 firms with active HUBZone certifications.[59]

Table 1. Number of HUBZone-Certified Small Businesses Listed in the SBA's Dynamic Small Business Search Database, Selected Dates, 2010-2019

Date	Number
May 4, 2010	7,567
May 5, 2011	8,533
December 21, 2011	6,900
July 5, 2012	6,602
December 27, 2012	5,637
July 11, 2013	5,788
December 17, 2013	5,799
July 24, 2014	5,808
December 22, 2014	5,510
July 13, 2015	5,207
December 3, 2015	5,397
July 6, 2016	5,476
January 21, 2017	5,930
July 10, 2017	5,741
December 15, 2017	5,961
July 10, 2018	6,335
November 8, 2018	6,558
July 10, 2019	6,854
November 27, 2019	7,183

Sources: U.S. Small Business Administration (SBA), Office of Congressional and Legislative Affairs, "Correspondence with the author," May 4, 2010, and May 5, 2011; and SBA, "Dynamic Small Business Search Database," at http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm; accessed on the date provided.

[59] SBA, "Dynamic Small Business Search Database," November 27, 2019, at http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.

To become certified, firms complete and submit specified SBA HUBZone application forms to the SBA, either online or by mail. Firms must

- meet SBA size standards for the firm's primary industry classification;
- be at least 51% owned and controlled by U.S. citizens, a community development corporation, an agricultural cooperative, or an Indian tribe (including Alaska Native Corporations and Native Hawaiian Organizations);
- maintain a principal office located in a HUBZone;
- ensure that at least 35% of its employees reside in a HUBZone;[60]
- represent, as provided in the application, that it will "attempt to maintain" having at least 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives;[61]
- represent, as provided in the application, that it will ensure that it will comply with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone small business concern (such as spending at least 50% of the cost of the contract incurred for personnel on its own employees or employees of other qualified HUBZone small business concerns and meeting specified subcontracting limitations to nonqualified HUBZone small business concerns);

[60] Effective May 3, 2010, "employee means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours per month. This includes employees obtained from a temporary employee agency, leasing concern, or through a union agreement or co-employed pursuant to a professional employer organization agreement." See SBA, "HUBZone and Government Contracting," 74 *Federal Register* 56702, November 3, 2009. Prior to May 3, 2010, the definition of employee was based on full-time equivalency and only permanent positions were counted.

Effective December 26, 2019, to count as residing in a HUBZone, employees must live in a location full-time and for at least 180 days immediately prior to the date of application or date of recertification, as applicable. When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction, SBA rounds to the nearest whole number (up or down). See SBA, "Small Business HUBZone Program and Government Contracting Programs," 84 *Federal Register* 65228, November 26, 2019. Prior to December 26, 2019, to count as residing in a HUBZone, employees must live in a primary residence at a place for at least 180 days, or as a currently registered voter, and with intent to live there indefinitely. Also, when determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction, the SBA would round up to the nearest whole number (never down).

Effective December 26, 2019, "An employee who resides in a HUBZone at the time of certification (or time of recertification where the individual is being treated as a HUBZone resident for the first time) shall continue to count as a HUBZone resident employee if the individual continues to live in the HUBZone for at least 180 days immediately after certification (or recertification) and remains an employee of the concern, even if the employee subsequently moves to a location that is not in a HUBZone or the area in which the employee's residence is located no longer qualifies as a HUBZone." See SBA, "Small Business HUBZone Program and Government Contracting Programs," 84 *Federal Register* 65242, November 26, 2019. Prior to December 26, 2019, employees who had moved out of a HUBZone were not counted toward meeting residency requirements.

[61] The attempt to maintain provision is designed to assist HUBZone-certified firms maintain eligibility if they need to hire additional employees to perform a federal contract. Effective December 26, 2019, "attempt to maintain means making substantive and documented efforts, such as written offers of employment, published advertisements seeking employees, and attendance at job fairs and applies only to concerns during the performance of any HUBZone contract. A certified HUBZone small business concern that has less than 20% of its total employees residing in a HUBZone during the performance of a HUBZone contract has failed to attempt to maintain the HUBZone residency requirement." Firms have an affirmative duty to notify the SBA if they fall below the 20% attempt to maintain standard. See SBA, "Small Business HUBZone Program and Government Contracting Programs," 84 *Federal Register* 65240, November 26, 2019; and 13 C.F.R. §126.103. Prior to December 26, 2019, the SBA did not specify a minimum percentage of employees needed to maintain eligibility under the attempt to maintain provision.

- provide an active, up-to-date Dun and Bradstreet profile and Data Universal Numbering System (DUNS) number that represents the business; and
- provide an active Central Contractor Registration profile for the business.[62]

The SBA processes about 1,500 HUBZone applications each year.[63] Prior to 2010, the SBA's goal was to make its determination within 30 calendar days after receipt of a complete application package, subject to the need for additional information or clarification of information contained in the application.[64]

In response to reports of applicant fraud, in FY2009 the SBA began a two-year effort to reengineer its applicant review process (requiring applicants to submit documentation such as lease or rental agreements, three years of tax returns, citizenship documentation, and payroll records to prove they meet program requirements). Initially, depending on the complexity of the application and the need for additional information, the SBA took from 5 months to 12 months to make its determination. The SBA has since decreased the average time to process HUBZone applications, with about 61% of applications processed in three months or less.[65]

In 2016, the SBA revised its regulations to indicate that the SBA's goal was to make HUBZone determinations within 90 calendar days after receipt of a complete application package, subject to the need for additional information or clarification of information contained in the application.[66] P.L. 115-91 requires the SBA, effective January 1, 2020, to process HUBZone certification applications with sufficient and complete documentation within 60 days of receipt.

If the SBA approves an application, it sends a written notice to the business and adds the business to its list of certified HUBZone businesses. A decision to deny eligibility must be in writing and state the specific reasons for denial.[67]

In the past, the SBA's staff conducted random program examinations "to verify the accuracy of any certification made or information provided as part of the HUBZone application process, or in connection with a HUBZone contract."[68] Examiners typically verified that the business met the program's eligibility requirements and that it met such requirements at the time of its application for certification, its most recent recertification, or its certification in connection with a HUBZone contract.[69] In response to reports of fraud, the SBA, in addition to reengineering its applicant review process, now conducts program examinations of all firms that received a HUBZone

[62] 13 C.F.R. §126.200.

[63] SBA, *FY2020 Congressional Budget Justification and FY2018 Annual Performance Report*, p. 65, at https://www.sba.gov/sites/default/files/2019-04/SBA%20FY%202020%20Congressional%20Justification_final%20508%20%204%2023%202019.pdf.

[64] SBA, "HUBZone Empowerment Contracting Program," 63 *Federal Register* 31911, June 11, 1998.

[65] SBA, *FY2013 Congressional Budget Justification and FY2011 Annual Performance Report*, p. 72, at https://www.sba.gov/sites/default/files/files/1-508%20Compliant%20FY%202013%20CBJ%20FY%202011%20APR%281%29.pdf; and Michael A. Chodos, SBA, "Testimony before the U.S. House of Representatives Committee on Oversight and Government Reform," June 26, 2013, at http://docs.house.gov/meetings/GO/GO00/20130626/101044/HHRG-113-GO00-Wstate-ChodosM-20130626.pdf.

[66] SBA, "Small Business Mentor Protégé Programs: Part 126, HUBZone Program," 81 *Federal Register* 48591, July 25, 2016.

[67] 13 C.F.R. §126.306.

[68] 13 C.F.R. §126.401.

[69] Ibid.

contract in the previous fiscal year.[70] SBA district field offices also conduct site visits to validate the geographic requirement for principal offices. In FY2018, SBA district field offices completed 529 on-site compliance reviews of HUBZone-certified firms, about 10% of the HUBZone-certified firms in the SBA's portfolio.[71]

Effective December 26, 2019, certified HUBZone small businesses must annually represent to the SBA that they continue to meet all HUBZone eligibility criteria (without requiring supporting information or documentation unless the SBA has reason to question the firm's recertification) and recertify with full documentation every three years that they meet the requirements for being a HUBZone business.[72] They must also immediately notify the SBA of any material change that could affect their eligibility, such as a change in the ownership, business structure, or principal office of the concern or a failure to meet the 35% HUBZone residency requirement.[73]

HUBZone Federal Contracting Goals

Since 1978, federal agency heads have been required to establish federal procurement contracting goals, in consultation with the SBA, "that realistically reflect the potential of small business concerns and small businesses concerns owned and controlled by socially and economically disadvantaged individuals" to participate in federal procurement.[74] Each agency is required, at the conclusion of each fiscal year, to report its progress in meeting the goals to the SBA.

In 1988, Congress authorized the President to annually establish government-wide minimum participation goals for procurement contracts awarded to small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals. Congress required the government-wide minimum participation goal for small businesses to be "not less than 20% of the total value of all prime contract awards for each fiscal year" and "not less than 5% of the total value of all prime contract and subcontract awards for each fiscal year" for small businesses owned and controlled by socially and economically disadvantaged individuals.[75]

Each federal agency was also directed to "have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts let by such agency."[76] The SBA was also required to report to the President annually on the attainment of the goals and to include the information in an annual

[70] SBA, *FY2011 Congressional Budget Justification and FY2009 Annual Performance Report*, pp. 72, 73, at https://www.sba.gov/sites/default/files/aboutsbaarticle/Congressional_Budget_Justification.pdf.

[71] SBA, *FY2020 Congressional Budget Justification and FY2018 Annual Performance Report*, p. 76, at https://www.sba.gov/sites/default/files/2019-04/SBA%20FY%202020%20Congressional%20Justification_final%20508%20%204%2023%202019.pdf.

[72] Prior to December 26, 2019, certified HUBZone small businesses had to recertify with full documentation every three years and to certify to federal contracting officers offering a contract that it was HUBZone eligible at both the time of the firm's initial offer and at the time of award. As of December 26, 2019, HUBZone small businesses represent to the contracting officer that it is a certified HUBZone small business at the time of each offer, but its eligibility would relate back to the date of its certification or recertification, not to the date of the offer. See SBA, "Small Business HUBZone Program and Government Contracting Programs," 84 *Federal Register* 65222, November 26, 2019; 13 C.F.R. §126.500; and 13 C.F.R. §126.601(d).

[73] 13 C.F.R. §126.501.

[74] See 15 U.S.C. §644(g)(2) and P.L. 95-507, a bill to amend the Small Business Act and the Small Business Investment Act of 1958.

[75] See 15. U.S.C. §644(g)(1) and P.L. 100-656, the Business Opportunity Development Reform Act of 1988.

[76] Ibid.

report to Congress.[77] The SBA negotiates the goals with each federal agency and establishes a *small business eligible* baseline for evaluating the agency's performance.[78] The agency head is required to "make consistent efforts to annually expand participation by small business concerns from each industry category."[79] If the SBA and the agency cannot agree on the goals, the agency may submit the case to the Office of Management and Budget (OMB) Office of Federal Procurement Policy (OFPP) for resolution.[80]

The small business eligible baseline excludes certain contracts that the SBA has determined do not realistically reflect the potential for small business participation in federal procurement (such as those awarded to mandatory and directed sources), contracts funded predominately from agency-generated sources (i.e., nonappropriated funds), contracts not covered by Federal Acquisition Regulations, acquisitions on behalf of foreign governments, and contracts not reported in the General Services Administration's (GSA's) Federal Procurement Data System—Next Generation, or FPDS-NG (such as contracts or government procurement card purchases valued less than $10,000).[81] These exclusions typically account for 18% to 20% of all federal prime contracts each year.

The SBA then evaluates the agencies' performance against their negotiated goals and presents the results in the SBA's annual Small Business Procurement Scorecards. The SBA uses FPDS-NG data, which are published in GSA's annual Small Business Goaling Report. Each agency that fails to achieve any proposed prime or subcontract goal is required to submit a justification to the SBA on why it failed to achieve a proposed or negotiated goal with a proposed plan of corrective action.[82]

Agencies can take credit in every category that is applicable to the recipient of the contract. For example, "when counting goaling achievements, a contract awarded to a Service-Disabled Veteran-Owned Woman-Owned Small Business would be counted toward the Small Business (SB) goal, the Service-Disabled Veteran-Owned Small Business (SDVOSB) goal and the Women-Owned Small Business (WOSB) goal. However, these category counts are not summed to triple the total count. *The Sum of Parts Does Not Equal the Whole* (italics in original)."[83]

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[77] Ibid.

[78] According to a 2001 GAO report, the SBA began to specify what types of contracts the Federal Procurement Data System would exclude when determining agency compliance with federal contracting goals in FY1998. Prior to FY1998, agencies reported their small business contracting information directly to the SBA and excluded from their calculations certain types of contracts, such as those for which the agency felt that small businesses had a limited or no chance to compete. GAO reported that "SBA officials said that in some cases they were not aware of all exclusions the agencies made when reporting their numbers." See GAO, *Small Business: More Transparency Needed in Prime Contract Goal Program*, GAO-01-551, August 1, 2001, pp. 9-10, at http://www.gao.gov/assets/240/231854.pdf.

[79] 15 U.S.C. §644(g)(2).

[80] SBA, Office of Policy, Planning & Liaison, Office of Government Contracting & Business Development, "FY 2018 Goaling Guidelines," August 30, 2017, p. 4, at https://www.sba.gov/sites/default/files/2018-06/FY18_Small_Business_Goaling_Guidelines.pdf.

[81] Ibid., p. 3; and U.S. General Services Administration (GSA), Federal Procurement Data System—Next Generation, "What's In FPDS-NG," at https://www.fpds.gov/wiki/index.php/FPDS-NG_FAQ.

[82] SBA, Office of Policy, Planning & Liaison, Office of Government Contracting & Business Development, "FY 2018 Goaling Guidelines," August 30, 2017, p. 6, at https://www.sba.gov/sites/default/files/2018-06/FY18_Small_Business_Goaling_Guidelines.pdf.

[83] Ibid., p. 5. "… The exception to this non-additive rule is for total Small Disadvantaged Business (SDB) which is the sum of 8(a) and non-8(a) SDBs. Each special type of small business is first of all a small business. That also means Federal procurements awarded to SDVOSB will also have been awarded to Veteran-Owned Small Business (VOSB)." See ibid.

Over the years, federal government-wide procurement contracting goals have been established for small businesses generally (P.L. 100-656, the Business Opportunity Development Reform Act of 1988, and P.L. 105-135, the HUBZone Act of 1997—Title VI of the Small Business Reauthorization Act of 1997), small businesses owned and controlled by socially and economically disadvantaged individuals (P.L. 100-656), women (P.L. 103-355, the Federal Acquisition Streamlining Act of 1994), small businesses located within a HUBZone (P.L. 105-135), and small businesses owned and controlled by a service-disabled veteran (P.L. 106-50, the Veterans Entrepreneurship and Small Business Development Act of 1999).

The current federal small business contracting goals are

- at least 23% of the total value of all small business eligible prime contract awards to small businesses for each fiscal year,
- 5% of the total value of all small business eligible prime contract awards and subcontract awards to small disadvantaged businesses for each fiscal year,
- 5% of the total value of all small business eligible prime contract awards and subcontract awards to women-owned small businesses,
- 3% of the total value of all small business eligible prime contract awards and subcontract awards to HUBZone small businesses, and
- 3% of the total value of all small business eligible prime contract awards and subcontract awards to service-disabled veteran-owned small businesses.[84]

There are no punitive consequences for not meeting these goals. However, the SBA's Small Business Procurement Scorecards and GSA's Small Business Goaling Report are distributed widely, receive media attention, and heighten public awareness of the issue of small business contracting. For example, agency performance as reported in the SBA's Small Business Procurement Scorecards is often cited by Members during their questioning of federal agency witnesses during congressional hearings.

As shown in **Table 2**, the *FY2018 Small Business Goaling Report* indicates that federal agencies met the federal contracting goal for small businesses generally, small disadvantaged businesses, and service-disabled veteran-owned small businesses in FY2018. **Table 2** also provides, for comparative purposes, the percentage of total reported federal contracts (without exclusions) awarded to those small businesses in FY2018.

[84] 15 U.S.C. §644(g)(1)-(2).

Table 2. Federal Contracting Goals and Percentage of FY2018 Federal Contract Dollars Awarded to Small Businesses, by Type

Business Type	Federal Goal	Percentage of FY2018 Federal Contracts (small business eligible)	Percentage of FY2018 Federal Contracts (all reported contracts)
Small Businesses	23.0%	25.06%	22.43%
Small Disadvantaged Businesses	5.0%	9.65%	8.62%
Women-Owned Small Businesses	5.0%	4.75%	4.21%
HUBZone Small Businesses	3.0%	2.05%	1.78%
Service-Disabled Veteran-Owned Small Businesses	3.0%	4.27%	4.07%

Sources: U.S. Small Business Administration, "Statutory Guidelines," at https://www.sba.gov/content/statutory-guidelines-0 (federal goals); U.S. General Services Administration, Federal Procurement Data System—Next Generation, "Small Business Goaling Report: Fiscal Year 2018," at https://www.fpds.gov/downloads/top_requests/FPDSNG_SB_Goaling_FY_2018.pdf; and U.S. General Services Administration, Federal Procurement Data System—Next Generation, at https://www.fpds.gov/fpdsng/ (contract dollars).

Notes: The Federal Procurement Data System (FPDS) is a dynamic system with records updated daily. The Small Business Goaling Report for FY2018 reports that small business eligible contracts, as of June 25, 2019, totaled $482.4 billion and that $120.9 billion was awarded to small businesses, $46.5 billion to small disadvantaged businesses, $22.9 billion to women-owned small businesses, $9.9 billion to SBA-certified HUBZone small businesses, and $20.6 billion to service-disabled veteran-owned small businesses. The Small Business Goaling Report for FY2018 does not indicate the total amount of federal contracts reported in the FPDS-NG on June 25, 2019. The percentages provided in the column for all reported contracts in FY2018 were calculated using FPDS-NG data for all contracts as reported on July 1, 2019: $555.5 billion in total contracts; $124.6 billion to small businesses, $47.9 billion to small disadvantaged businesses, $23.4 billion to women-owned small businesses, $9.9 billion to SBA-certified HUBZone small businesses, and $22.6 billion to service-disabled veteran-owned small businesses.

Congressional Issues

Congressional interest in the HUBZone program has increased in recent years, primarily due to GAO reports of fraud in the program and efforts by small businesses to ease HUBZone eligibility requirements.[85]

[85] In addition, Congress addressed the potential consequence of two Court of Federal Claims decisions that directed federal agencies to provide HUBZone set-asides preference when two or more set-aside programs could potentially be used. Providing the HUBZone program preference over other small business contracting programs could have resulted in an increase in the percentage of federal contract dollars awarded to HUBZone small businesses and a decrease in the percentage of federal contract dollars awarded to other small businesses. P.L. 111-240, the Small Business Jobs Act of 2010, amended the Small Business Act (15 U.S.C. 657a(b)(2)(B)) to remove the language that the court relied upon in finding that HUBZone set-asides have "precedence." Specifically, the act struck the phrase "a contract opportunity shall" and replaced it with "a contract opportunity may." The court had ruled that the use of the word *shall* made the HUBZone program mandatory, whereas the use of the word *may* in the Section 8(a) contracting program for small businesses owned and controlled by the socially and economically disadvantaged made it a discretionary program, and mandatory programs took precedence over discretionary ones. See *DGR Assocs., Inc. v. United States*, 2010 U.S. Claims LEXIS 588 (August 13, 2010); and *Mission Critical Solutions v. United States*, 2010 U.S. Claims LEXIS 36 (March 2, 2010); GAO, Mission Critical Solutions, B-401057, May 4, 2009, at http://www.gao.gov/decisions/bidpro/401057.pdf; and Office of Legal Counsel, Department of Justice, Permissibility of Small Business Administration

Program Administration

GAO and the SBA's Office of Inspector General (OIG) have audited the SBA's administration of the HUBZone program on many occasions over the years and have made a number of recommendations to improve the SBA's internal control and oversight practices in an effort to deter fraud in the program. In most instances, the SBA has endeavored to implement these recommendations, but both GAO and the OIG have argued that despite these efforts administrative challenges remain.

SBA OIG and GAO Audits, 2006-2010

- In 2006, the OIG reported that there was a two-year backlog in HUBZone program examinations. It noted that it was concerned "that workload resources had not been adequately devoted to eliminating this two-year backlog" and that firms that should be decertified from the program remained on the list of certified HUBZone businesses and potentially were "inappropriately receiving HUBZone contracts between the time they are initially certified and subsequently examined/recertified."[86]
- In 2008, GAO reported that the map used by the SBA to publicize qualified HUBZone areas was inaccurate, resulting in ineligible small businesses participating in the program and excluding eligible businesses; the mechanisms used by the SBA to certify and monitor HUBZone firms provided limited assurance that only eligible firms participated in the program; the SBA had not complied with its own policy of recertifying HUBZone firms every three years (about 40% of those firms had not been recertified); and the SBA lacked formal guidance that would specify a time frame for processing HUBZone firm decertifications (1,400 of 3,600 firms proposed for decertification had not been processed within the SBA's self-imposed goal of 60 days).[87]
- In 2008, GAO released another report that "identified substantial vulnerabilities in SBA's application and monitoring process, clearly demonstrating that the HUBZone program is vulnerable to fraud and abuse."[88] Using fictitious employee information and fabricated documentation, GAO obtained HUBZone certification for four bogus firms. In one of its applications, GAO claimed that its principal office was the same address as a coffee store that happened to be located in a HUBZone. GAO argued that if the SBA "had performed a simple Internet search on the address, it would have been alerted to this fact."[89] Two of GAO's applications used leased mailboxes from retail postal services centers. GAO argued that "a post office box clearly does not meet SBA's principal office

Regulations Implementing the Historically Underutilized Business Zone, 8(a) Business Development, and Service-Disabled Veteran-Owned Small Business Concern Programs, August 21, 2009, at http://www.justice.gov/sites/default/files/olc/opinions/2009/08/31/sba-hubzone-opinion082109.pdf.

[86] SBA, Office of the Inspector General, *HUBZone Program Examination and Recertification Processes*, May 23, 2006, pp. 3, 6.

[87] Ibid., pp. 1-5.

[88] GAO, *HUBZone Program: SBA's Control Weaknesses Exposed the Government to Fraud and Abuse*, GAO-08-964T, July 17, 2008, pp. i, 4, 5, 7-9, at http://www.gao.gov/new.items/d08964t.pdf.

[89] Ibid.

requirement."[90] In addition, it identified "10 firms from the Washington, D.C. metro area that were participating in the HUBZone program even though they clearly did not meet eligibility requirements."[91]

- GAO subsequently selected four geographical areas for analysis to determine whether cases of fraud and abuse exist for HUBZone businesses located outside of the Washington, DC, metropolitan area: Dallas, TX; Huntsville, AL; San Antonio, TX; and San Diego, CA. GAO reported in March 2009 that it found "fraud and abuse" in all four metropolitan areas, including 19 firms that "clearly are not eligible," and highlighted 10 firms that it "found to be egregiously out of compliance with HUBZone program requirements."[92]
- In 2010, GAO submitted applications for HUBZone certification for "four new bogus firms … using false information and fabricated documents ... fictitious employee information and bogus principal office addresses" including "the addresses of the Alamo in Texas, a public storage facility in Florida, and a city hall in Texas as principal office locations."[93] The SBA certified three of the four bogus firms and lost GAO's documentation for its fourth application "on multiple occasions," forcing GAO to abandon that application.[94] GAO reported that "the SBA continues to struggle with reducing fraud risks in its HUBZone certification process despite reportedly taking steps to bolster its controls."[95]

The SBA responded to these audits and congressional criticism of its administration of the HUBZone program by "reengineering business processes to reduce fraud and abuse within the program."[96] In 2006, the SBA committed to reviewing 5% of all certifications "through a full-scale program of examinations."[97] In 2009, it "moved from verifying a sample of HUBZone firms to verifications of 100% of HUBZone firms receiving contracts in the previous fiscal year."[98] In 2010, the SBA reported that its standard HUBZone business process

> now requires all firms to submit supporting documentation verifying the information and statements made in their application. Previous practice required firms only to submit an electronic application.
>
> In addition, the Program Office implemented a new business process for recertifying HUBZone firms which requires all firms that are due for recertification to certify via wet

[90] Ibid.

[91] Ibid., pp. 5, 10-20.

[92] GAO, *Small Business Administration: Status of Efforts to Address Previous Recommendations on the HUBZone Program*, GAO-09-532T, March 25, 2009, pp. 5-8, at http://www.gao.gov/new.items/d09532t.pdf.

[93] GAO, *Small Business Administration: Undercover Tests Show HUBZone Program Remains Vulnerable to Fraud and Abuse*, GAO-10-759, June 25, 2010, Highlights section and p. 2, at http://www.gao.gov/new.items/d10759.pdf.

[94] Ibid., p. 4.

[95] Ibid.

[96] SBA, *FY2011 Congressional Budget Justification and FY2009 Annual Performance Report*, pp. 72, 73, at https://www.sba.gov/sites/default/files/aboutsbaarticle/Congressional_Budget_Justification.pdf.

[97] U.S. Congress, House Committee on Small Business, *Full Committee Hearing to Consider Legislation Updating and Improving the SBA's Contracting Programs*, 110th Cong., 1st sess., October 4, 2007, Serial Number 110-50 (Washington: GPO, 2007), p. 6.

[98] Ibid., p. 76.

> signature that they still conform to the eligibility requirements. Previous practice required firms to submit an electronic verification.[99]

On April 21, 2010, Karen Mills, the SBA's Administrator at that time, testified before the House Committee on Small Business that the SBA is "working to ensure that only legitimate and eligible firms are benefiting from HUBZone" and has "made dramatic increases in the number of site visits to HUBZone firms."[100]

The SBA conducted 680 HUBZone site visits in FY2008, 911 in FY2009, 1,070 in FY2010, 988 in FY2011, 788 in FY2012, 511 in FY2013, 569 in FY2014, 518 in FY2015, 515 in FY2016, 505 in FY2017, and 529 in FY2018.[101]

The SBA's new, more labor-intensive certification process, coupled with an increase in applications for HUBZone certifications, resulted in what the SBA described as "significant delays in the processing of new applications for certification."[102] Noting that individual applications "can vary greatly depending on the complexity of the case and the applicant's responsiveness to any requests for supporting information," the SBA reported in 2010 that the final HUBZone determination time frames "vary from 5 months to 12 months, with an average of 8 to 10 months."[103] The SBA has since decreased the average time to process HUBZone applications, with about 61% of applications processed in three months or less.[104]

As mentioned previously, P.L. 115-91 requires the SBA, effective January 1, 2020, to process HUBZone certification applications with sufficient and complete documentation within 60 days of receipt.

SBA's OIG Audit, 2013

On November 19, 2013, the OIG released the results of an audit of 12 of the 357 firms that received HUBZone certification between July 2012 and December 2012. The 12 firms accounted for 94% of the federal contract dollars awarded to those 357 firms during that time period.

The OIG found that 3 of the 12 firms "received certification without meeting the requirements of the program."[105] Specifically, the OIG found "one firm [that] did not meet the principal office

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[99] Ibid., pp. 72, 73.

[100] Testimony of Karen G. Mills, then-SBA administrator, before the U.S. House of Representatives Committee on Small Business, "Accountability Update," April 21, 2010, at http://www.house.gov/smbiz/democrats/hearings/hearing-04-21-10-oversight/Mills.pdf.

[101] SBA,*FY2015 Congressional Budget Justification and FY2013 Annual Performance Report*, p. 113, at https://www.sba.gov/sites/default/files/files/FY15_CBJ_FY%202013_APR.pdf; SBA, *FY2020 Congressional Budget Justification and FY2018 Annual Performance Report*, p. 76, at https://www.sba.gov/sites/default/files/2019-04/SBA%20FY%202020%20Congressional%20Justification_final%20508%20%204%2023%202019.pdf.

[102] SBA, "HUBZones: Frequently Asked Questions," at https://www.sba.gov/contracting/government-contracting-programs/hubzone-program/frequently-asked-questions.

[103] SBA, Office of Congressional and Legislative Affairs, "Correspondence with the author," May 4, 2010.

[104] SBA, *FY2013 Congressional Budget Justification and FY2011 Annual Performance Report*, p. 72, at https://www.sba.gov/sites/default/files/files/1-508%20Compliant%20FY%202013%20CBJ%20FY%202011%20APR%281%29.pdf; and Michael A. Chodos, SBA, "Testimony before the U.S. House of Representatives Committee on Oversight and Government Reform," June 26, 2013, at http://docs.house.gov/meetings/GO/GO00/20130626/101044/HHRG-113-GO00-Wstate-ChodosM-20130626.pdf.

[105] SBA, Office of the Inspector General, *Opportunities Exist to Further Improve Quality and Timeliness of HUBZone Certifications*, November 19, 2013, p. 6, at https://www.sba.gov/sites/default/files/Audit%20Report%2014-03%20Opportunities%20Exist%20to%20Further%20Improve%20Quality%20and%20Timeliness%20of%20HUBZone

requirement, one firm [that] did not meet the 35% residency requirement, and one instance where a possibly fraudulent application was missed."[106] The OIG also noted that

- the HUBZone program's standard operating procedures (SOP) manual was last updated in November 2007, when firms self-certified their HUBZone eligibility, and does not account for the SBA's new certification process;
- the SBA did not make its eligibility determination within 30 calendar days of the receipt of a complete application for all 12 of the nonfraudulent applications reviewed as required under the SBA's existing regulations;[107] and
- the SBA did not make its eligibility determination within its proposed 90 calendars days of the receipt of a complete application, a change to the existing regulations that the SBA is seeking due to the shift from self-certification to full document review, for 5 of the 12 firms.[108]

The SBA responded to the OIG's audit on November 12, 2013, indicating that it planned to update and publish a new HUBZone program SOP by the end of 2014, issue decertification notices for the three firms cited in the OIG's audit, and amend the certification process "so that actions are completed within an average of 90 days from the date the application is electronically verified."[109]

The new HUBZone SOP has not been published. The delay may be related to the SBA's years-long comprehensive review of the program's regulations, which resulted in numerous changes "to reduce the regulatory burden imposed on HUBZone small business concerns" that were published in the *Federal Register* on November 26, 2019 (effective December 26, 2019).[110] Now that the review has been completed and the final regulation issued, the SBA is widely expected to work on a new SOP for the HUBZone program that incorporates these changes.

SBA's OIG Audit, 2019

On March 28, 2019, the OIG released the results of an audit of 15 of 39 firms that received HUBZone certification and a HUBZone contract between April 1, 2017, and March 31, 2018. The 15 firms obtained approximately $29.4 million in HUBZone contract dollars during that time period. Of these selected firms, five received more than $1 million in HUBZone contracts, five received HUBZone contacts amounting to $100,000 to $999,999, and five received HUBZone contacts amounting to less than $100,000.[111]

%20Certifications.pdf.

[106] Ibid.

[107] See 13 C.F.R. §126.306. "SBA will make its determination within 30 calendar days after receipt of a complete package whenever practicable."

[108] SBA, Office of the Inspector General, *Opportunities Exist to Further Improve Quality and Timeliness of HUBZone Certifications*, November 19, 2013, p. 10, at https://www.sba.gov/sites/default/files/Audit%20Report%2014-03%20Opportunities%20Exist%20to%20Further%20Improve%20Quality%20and%20Timeliness%20of%20HUBZone%20Certifications.pdf.

[109] Ibid., p. 14.

[110] SBA, "Small Business HUBZone Program and Government Contracting Programs," 84 *Federal Register* 65222-65251, November 26, 2019. Also, see SBA, "Semiannual Regulatory Agenda: Small Business HUBZone Program," 79 *Federal Register* 76791, December 22, 2014; SBA, "Semiannual Regulatory Agenda: Small Business HUBZone Program," 80 *Federal Register* 78042, December 15, 2015; and SBA, "Small Business HUBZone Program; Government Contracting Programs," 83 *Federal Register* 54812-54835, October 31, 2018.

[111] SBA, Office of the Inspector General, *SBA's HUBZone Certification Process*, p. 15, at https://www.sba.gov/sites/

The OIG found that the SBA "did not detect indicators of fraud and certified 2 of the 15 firms … that did not meet principal office location requirements" and "certified a third firm … based on incomplete analysis of supporting documentation" related to the 35% residency requirement.[112] The OIG questioned $598,000 in contract obligations for these firms and concluded that "these deficiencies occurred because the Program Office did not have a standardized review process of the analysis of oversight of HUBZone certifications" and "did not update its written policies despite a prior OIG audit recommendation to update its HUBZone guidance."[113]

The OIG also found that the SBA did not make its eligibility determinations for 4 of the 15 firms with the 90-day regulatory requirement and "did not timely assign applications to analysts for certified and pending firms."[114] The OIG concluded that these delays were due to "a lack of formalized guidance, IT issues, and staff turnover."[115]

The OIG issued five recommendations for the SBA's consideration, including reexamine the three cited firm's eligibility, update and implement HUBZone written guidance, and implement a plan to mitigate information technology issues affecting the HUBZone certification process. The SBA responded to a draft of the OIG's audit on March 14, 2019, indicating that it agreed with all five recommendations and had already reexamined the eligibility of one of the three firms cited in the audit.[116]

Legislation

During the 112th Congress, S. 633, the Small Business Contracting Fraud Prevention Act of 2011, which was introduced on March 17, 2011, and agreed to by the Senate, with amendment, by unanimous consent on September 21, 2011, would have required the SBA to implement GAO's recommendations to

- maintain a correct, accurate, and updated map to identify HUBZone areas;
- implement policies that ensure only eligible firms participate in the program;
- employ appropriate technology to control costs and maximize efficiency;
- notify the Small Business Committees of any backlogs in applications or recertifications with plans and timetables for eliminating the backlog;
- ensure small businesses meet the 35% HUBZone residency requirement at the time of bid as well as at the time of the contract award; and
- extend the redesignated status of HUBZone areas that lose that status due to the release of economic data from the 2010 decennial census for three years after the first date on which the SBA publishes a HUBZone map that is based on the results from that census.[117]

default/files/oig/SBA-OIG-Report-19-08.pdf.

[112] Ibid., p. 4.

[113] Ibid.

[114] Ibid., p. 10.

[115] Ibid., p. 11.

[116] Ibid., pp. i, 18-20.

[117] The bill's sponsor, then-Senator Olympia Snowe, introduced similar legislation in 2010, S. 3020, the HUBZone Improvement Act of 2010. See Senator Olympia Snowe, "Statements on Introduced Bills and Joint Resolutions," remarks in the Senate, *Congressional Record*, daily edition, vol. 156 (February 23, 2010), p. S702.

In addition, S. 3572, the Restoring Tax and Regulatory Certainty to Small Businesses Act of 2012, was introduced on September 19, 2012, and referred to the Senate Committee on Finance. It included, among other provisions, the HUBZone provisions contained in S. 633.

The SBA did not formally respond to the legislation. It has argued at congressional hearings and in its congressional budget justification documents that it has taken steps to implement GAO's recommendations.[118]

During the 114th Congress, P.L. 114-187, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), includes a provision requiring the SBA to implement, within 270 days following PROMESA's enactment (which took place on June 30, 2016), a risk-based approach to requesting and verifying information from firms applying to be designated or recertified as a qualified HUBZone small business. GAO is required to begin an assessment of the SBA's risk-based approach within a year of the approach's implementation and complete the assessment, along with any recommendations for improvement, within the following six months.

During the 115th Congress, P.L. 115-91, the National Defense Authorization Act for Fiscal Year 2018, among other provisions, requires the SBA, starting on January 1, 2020, to "conduct program examinations of qualified HUBZone small business concerns, using a risk-based analysis to select which concerns are examined, to ensure that any concern examined meets the [program's] requirements." The act also specifies that any small business that misrepresented its status as a qualified HUBZone small business concern shall be subject to liability for fraud.

Performance Measures

As part of its 2008 audit of the HUBZone program, GAO reported that the SBA had taken "limited steps" to assess the effectiveness of the HUBZone program.[119] It noted that the SBA's performance measures—the number of applications approved and recertifications processed, the annual value of federal contracts awarded to HUBZone firms, and the number of program examinations completed—provide data on program activity but "do not directly measure the program's effect on firms (such as growth in employment or changes in capital investment) or directly measure the program's effect on the communities in which the firms are located (for instance, changes in median household income or poverty levels)."[120] GAO recommended that the SBA "further develop measures and implement plans to assess the effectiveness of the HUBZone program that take into account factors such as the economic characteristics of the HUBZone area."[121]

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[118] U.S. Congress, House Committee on Small Business, *Full Committee Hearing on Oversight of the Small Business Administration and its Programs*, 111th Cong., 1st sess., March 25, 2009, Small Business Committee Document Number 111-012 (Washington: GPO, 2009), pp. 4-27, 32-38; Testimony of Karen G. Mills, then-SBA administrator, before the U.S. House of Representatives Committee on Small Business, "Accountability Update," April 21, 2010, at http://www.house.gov/smbiz/democrats/hearings/hearing-04-21-10-oversight/Mills.pdf; SBA, *FY2011 Congressional Budget Justification and FY2009 Annual Performance Report*, pp. 72, 73, at https://www.sba.gov/sites/default/files/aboutsbaarticle/Congressional_Budget_Justification.pdf; and SBA, *FY2012 Congressional Budget Justification and FY2010 Annual Performance Report*, pp. 77-79, at https://www.sba.gov/sites/default/files/aboutsbaarticle/FINAL%20FY%202012%20CBJ%20FY%202010%20APR_0.pdf.

[119] GAO, *Small Business Administration: Additional Actions are Needed to Certify and Monitor HUBZone Businesses and Assess Program Results*, GAO-08-643, June 17, 2008, p. 5, at http://www.gao.gov/new.items/d08643.pdf.

[120] Ibid., p. 34.

[121] Ibid., p. 45.

The SBA responded to GAO's findings by announcing that it "would develop an assessment tool to measure the economic benefits that accrue to areas in the HUBZone program" and that it "would then issue periodic reports accompanied by the underlying data."[122]

On March 25, 2009, GAO reported that, as of that date, the SBA had not developed measures or implemented plans to assess the program's effectiveness.[123] GAO noted that the SBA did commission an independent review of the HUBZone program's economic impact. That study was released in May 2008. It concluded that the HUBZone program

> has not generated enough HUBZone contract dollars to have an impact on a national scale. When spread over an eight-year period across 2,450 metropolitan areas and counties with qualified census tracts, qualified counties, and Indian reservations, $6 billion has a limited impact….
>
> About two-thirds of HUBZone areas have HUBZone businesses; just under one-third have HUBZone vendors that have won HUBZone contracts; and about 4 percent of HUBZone areas have received annual-equivalent HUBZone contract revenues greater than $100 per capita, based on HUBZone population….
>
> The program has a substantial impact in only a very small percentage of HUBZones. Where the impact is largest, there generally is at least one very successful vender in the HUBZone. Thus, the program can be effective. At present, however, the impact in two-thirds of all HUBZones is nil.[124]

GAO also noted that the SBA had issued a notice in the *Federal Register* on August 11, 2008, seeking public comment on a proposed methodology for measuring the economic impact of the HUBZone program.[125] The notice presented a two-step economic model that the SBA had developed to estimate the impact on HUBZone areas directly attributable to the HUBZone program, the SBA's non-HUBZone programs, and other related federal procurement programs. The notice indicated that economic impact "will be measured by the estimated growth in median household income and employment (or a reduction in unemployment) in a specific HUBZone area."[126]

GAO criticized the SBA for relying on public comments to refine the proposed methodology "rather than conducting a comprehensive effort" that considered relevant literature and input from experts in economics and performance measurement.[127] GAO concluded that "based on our review, we do not believe this effort was a sound process for developing measures to assess the effectiveness of the program" and reported that the SBA had abandoned that proposal and "had initiated a new effort to address this issue."[128]

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[122] Ibid., p. 46.

[123] GAO, *Small Business Administration: Status of Efforts to Address Previous Recommendations on the HUBZone Program*, GAO-09-532T, March 25, 2009, p. 8, at http://www.gao.gov/new.items/d09532t.pdf.

[124] Henry Beale and Nicola Deas, "The HUBZone Program Report," Washington, DC: Microeconomic Applications, Inc., prepared for the SBA, Office of Advocacy, May 2008, pp. i–iii, at https://www.sba.gov/content/hubzone-program-report.

[125] SBA, "Notice of methodology for measuring the economic impact of the HUBZone Program," 73 *Federal Register* 46698-46703, August 11, 2008.

[126] Ibid., p. 46701.

[127] GAO, *Small Business Administration: Status of Efforts to Address Previous Recommendations on the HUBZone Program*, GAO-09-532T, March 25, 2009, p. 9, at http://www.gao.gov/new.items/d09532t.pdf.

[128] Ibid.

The SBA indicated in its FY2011 budget justification report to Congress that it had developed "a methodology for measuring the economic impact of the HUBZone program" to "provide for the continuous study and monitoring of the program's effectiveness in terms of its economic goals."[129] However, it did not provide any details concerning the methodology and has continued to use its previous performance measures—the number of small businesses assisted (applications approved and recertifications processed), the annual value of federal contracts awarded to HUBZone firms, and the number of program examinations completed—to assess the program's performance.[130]

Legislation

During the 112th Congress, S. 633 would have required the SBA to implement GAO's recommendation to "develop measures and implement plans to assess the effectiveness of the HUBZone program."[131] It also would have required the SBA to identify "a baseline point in time to allow the assessment of economic development under the HUBZone program, including creating additional jobs" and take into account "the economic characteristics of the HUBZone and contracts being counted under multiple socioeconomic subcategories."[132]

The SBA did not formally respond to the legislation. It has argued at congressional hearings and in its congressional budget justification documents that it is taking steps to implement GAO's recommendation.[133]

During the 115th Congress, P.L. 115-91 requires the SBA, starting on January 1, 2020, to publish performance metrics measuring the HUBZone program's success in meeting the program's objective of promoting economic development in economically distressed areas and to submit, not later than 90 days after the last date of each fiscal year, a report to the House Committee on Small Business and the Senate Committee on Small Business and Entrepreneurship "analyzing the data from the performance metrics." Similar provisions were included in H.R. 2592, the Expanding the Impact of the HUBZone Program Act of 2017, and H.R. 3294, the HUBZone Unification and Business Stability Act of 2017.

Small Business Contracting Goals

As mentioned previously, the federal government has established procurement contracting goals for small businesses generally (at least 23% of the total value of all small business eligible prime contract awards for each fiscal year), small disadvantaged businesses (5% of the total value of all small business eligible prime contract awards and subcontract awards for each fiscal year), women-owned small businesses (5% of the total value of all small business eligible prime

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[129] SBA, *FY2011 Congressional Budget Justification and FY2009 Annual Performance Report*, p. 73, at https://www.sba.gov/sites/default/files/aboutsbaarticle/Congressional_Budget_Justification.pdf.

[130] Ibid.

[131] S. 633, the Small Business Contracting Fraud Prevention Act of 2011, §6. HUBZone Improvements.

[132] Ibid.

[133] U.S. Congress, House Committee on Small Business, *Full Committee Hearing on Oversight of the Small Business Administration and its Programs*, 111th Cong., 1st sess., March 25, 2009, Small Business Committee Document Number 111-012 (Washington: GPO, 2009), pp. 4-27, 32-38; SBA, *FY2011 Congressional Budget Justification and FY2009 Annual Performance Report*, pp. 72, 73, at https://www.sba.gov/sites/default/files/aboutsbaarticle/Congressional_Budget_Justification.pdf; and SBA, *FY2012 Congressional Budget Justification and FY2010 Annual Performance Report*, pp. 77-79, at https://www.sba.gov/sites/default/files/aboutsbaarticle/FINAL%20FY%202012%20CBJ%20FY%202010%20APR_0.pdf.

contract awards and subcontract awards for each fiscal year), HUBZone small businesses (3% of the total value of all small business eligible prime contract awards and subcontract awards for each fiscal year), and service-disabled veteran-owned small businesses (3% of the total value of all small business eligible prime contract awards and subcontract awards for each fiscal year).[134]

A number of bills have been introduced over the past several Congresses to increase the small business procurement contracting goals. Generally speaking, the executive branch, during both Democratic and Republican Administrations, has not advocated increasing these goals. Although no official reason has been provided for not advocating an increase in these goals, it is generally recognized that the sitting Administration is often blamed when small business contracting goals are not achieved. From FY2005 through FY2018 (14 fiscal years)

- the 23% contracting goal for small businesses generally was achieved 7 times (in FY2005 and FY2013-FY2018),
- the 5% contracting goal for small disadvantaged businesses was achieved in all 14 fiscal years,
- the 5% contracting goal for women-owned small businesses was achieved once (in FY2015),
- the 3% contracting goal for service-disabled veteran-owned small businesses was achieved 6 times (in FY2013-FY2018), and
- the 3% contracting goal for HUBZone small businesses was not met in any of these fiscal years.[135]

Because the federal government has frequently not been able to meet most of its small business contracting goals, sitting Administrations have generally been reluctant to advocate an increase in these goals. From the executive branch's perspective, increasing the goals could subject the sitting Administration to a greater risk of being labeled as *antibusiness* or *anti-small business* even if the executive branch increases its contracting with small businesses from the previous fiscal year. As a result, proposals to increase the small business contracting goals have originated in the legislative, as opposed to the executive, branch.

Legislation

Several bills were introduced during the 112th Congress to increase the federal government's small business contracting goals, including H.R. 2424, the Expanding Opportunities for Main Street Act of 2011, and its companion bill in the Senate (S. 1334); H.R. 2921, the Expanding Opportunities for Small Businesses Act of 2011; H.R. 2949, the Small Business Opportunity Expansion Act of 2011; H.R. 3850, the Government Efficiency through Small Business Contracting Act of 2012; H.R. 6078, the Small Business Contracting Opportunities Expansion Act of 2012; and S. 3213, the Small Business Goaling Act of 2012. In addition, as passed by the House on May 18, 2012, H.R. 4310, the National Defense Authorization Act for Fiscal Year 2013, included a provision that would have increased the 23% contracting goal for small businesses generally to 25%. The bill would have also established a 40% goal for small businesses generally of the total value of all subcontract awards for each fiscal year. These provisions were subsequently dropped from the bill.

[134] 15 U.S.C. §644(g)(1)-(2).

[135] U.S. General Services Administration, Federal Procurement Data System—Next Generation, "Small Business Goaling Reports, FY2005-FY2018," at https://www.fpds.gov/fpdsng_cms/index.php/reports.

During the 113th Congress, S. 259, the Assuring Contracting Equity Act of 2013, would have increased the federal government's 23% contracting goal for small businesses generally to 25%, raised the 5% contracting goals for small disadvantaged businesses and women-owned small businesses to 10%, and increased the 3% contracting goals for HUBZone small businesses and service-disabled veteran-owned small businesses to 6%.[136] The bill's provisions were reintroduced in both the House and Senate during the 114th Congress (H.R. 3175 and S. 1859) and the 115th Congress (H.R. 2362 and S. 1061).

In addition, H.R. 4093, the Greater Opportunities for Small Business Act of 2014, which was reported by the House Committee on Small Business on April 9, 2014, would have increased the federal government's 23% contracting goal for small businesses generally to 25% and established a 40% subcontracting goal for small businesses generally. H.R. 4435, the Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, which was passed by the House on May 22, 2014, also contained these two provisions. The Senate's national defense reauthorization bill (S. 2410) did not include this language. Also, H.R. 273, the Minority Small Business Enhancement Act of 2015, would have increased the federal government's 23% contracting goal for small businesses generally to 25% and the 5% contracting goals for small disadvantaged businesses and women-owned small businesses to 10%.

Advocates of increasing the federal government's small business contracting goals argue that higher goals are necessary to ensure that small businesses receive "a fair proportion of the total purchases and contracts for property and services for the government in each industry category."[137] They also contend that higher goals will "increase prime contracting and subcontracting opportunities for small businesses" and that "each time the goal has previously been increased, small business contracting, with its inherent benefits, has increased."[138]

During consideration of H.R. 4310, the National Defense Authorization Act for Fiscal Year 2013, the Obama Administration opposed the House's provisions that would have increased the 23% contracting goal for small businesses generally and established a 40% subcontracting goal for small businesses generally:

> The Administration strongly supports efforts to increase Federal contracting with small businesses, but opposes section 1631, which would establish a laudable but overly ambitious government-wide small business procurement goal and unrealistic individual agency goals that could undermine the goals process and take away the Government's ability to focus its efforts where opportunities for small business contractors are greatest.[139]

[136] H.R. 4093, the Greater Opportunities for Small Business Act of 2014, was introduced on February 26, 2014, and reported by the House Committee on Small Business on March 5, 2014. It would have increased the federal government's 23% contracting goal for small businesses generally to 25%. It did not address the contracting goal for HUBZone small businesses.

[137] U.S. Congress, House Committee on Small Business, *Greater Opportunities for Small Business Act of 2014*, report to accompany H.R. 4093, 113th Cong., 2nd sess., April 9, 2014, H.Rept. 113-409 (Washington: GPO, 2014), p. 3.

[138] U.S. Congress, House Committee on Small Business, *Government Efficiency Through Small Business Contracting Act of 2012*, report to accompany H.R. 3850, 112th Cong., 2nd sess., December 21, 2012, H.Rept. 112-70 (Washington: GPO, 2012), pp. 5-6.

[139] U.S. Office of Management and Budget, "Statement of Administration Policy: H.R. 4310 – National Defense Authorization Act for FY2013," May 15, 2012, p. 8, at http://www.presidency.ucsb.edu/ws/index.php?pid=100875.

Concluding Observations

Congressional interest in the SBA's HUBZone program has increased in recent years. Debates over the program's effect on economically distressed communities, as reflected in GAO's recommendation for new SBA performance measures; the federal government's difficulty in meeting the 3% contracting goal; the reduction in the number of HUBZone firms; and small business anxiety concerning the increased frequency of HUBZone eligibility determinations have all served to elevate congressional interest in the program. But perhaps the most influential reason for the increased level of congressional interest has been GAO's finding of fraud in the program.

The SBA has overhauled the program. It reported in its FY2011 congressional budget justification that it had "met its primary goal during FY2009" to reengineer its "business processes to reduce fraud and abuse with the program."[140] On April 21, 2010, then-SBA Administrator Karen Mills testified before the House Committee on Small Business that progress has been made but "we know there's more work to do."[141] She testified that "At the front-end, it means more upfront certification and eligibility. For small businesses already in the program, it means more efforts with compliance and site visits. And if they're found to be out of compliance, it means pursuing and removing bad actors."[142] Also, in its FY2013 congressional budget justification, the SBA indicated that

> To further reduce fraud, waste, and abuse, the HUBZone program began the systematic Legacy Portfolio Review of firms that were certified as a HUBZone prior to the FY2009 policy of full document review for initial certification. During FY2011, 2,040 firms completed the Legacy Portfolio Review. The SBA also conducted and received 987 site visit reports from its field staff conveying whether or not the firm appeared to be operating from the HUBZone principal office. This amount is in sharp contrast with the seven site visits that had been conducted in FY2008. In FY2012, the SBA will be rolling out a HUBZone recruitment initiative to target firms that may be HUBZone eligible and educate them on the benefits of the program.[143]

One of the immediate by-products of the SBA's new business processes was an increase in the processing time for new HUBZone certifications. In the past, the SBA had a self-imposed goal of making those certifications within 30 calendar days after receipt of a complete application package, subject to the need for additional information or clarification of information contained in the application. Now, depending on the complexity of the application and the need for additional information, the SBA reports that it takes, on average, about three months to make those certifications. Concerns about the processing times were reflected in P.L. 115-91's provision requiring the SBA, effective January 1, 2020, to process HUBZone certification applications with sufficient and complete documentation within 60 days of receipt. It remains to be determined if the SBA's new processes will reduce the incidence of fraud within the program. The resolution of that question could determine the future of the HUBZone program.

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[140] SBA, *FY 2011 Congressional Budget Justification and FY 2009 Annual Performance Report*, p. 72, at http://www.sba.gov/sites/default/files/Congressional_Budget_Justification.pdf.

[141] Testimony of Karen G. Mills, then-SBA administrator, before the U.S. House of Representatives Committee on Small Business, "Accountability Update," Washington, DC, April 21, 2010, at http://www.house.gov/smbiz/democrats/hearings/hearing-04-21-10-oversight/Mills.pdf.

[142] Ibid.

[143] SBA, *FY2013 Congressional Budget Justification and FY2011 Annual Performance Report*, p. 72, at http://www.sba.gov/sites/default/files/files/FY%202013%20CBJ%20FY%202011%20APR.pdf.

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