



U.S. Small Business
Administration

Office of Government Contracting and Business Development
U.S. Small Business Administration | 409 Third Street SW | Washington, DC 20416

September 17, 2019

The Honorable Michael B. Enzi
Chairman
Committee on the Budget
United States Senate
Washington, DC 20510-6100

Dear Chairman Enzi:

Acting Administrator Chris Pilkerton has asked that I respond to your follow up letter of August 28, 2019, regarding the U.S. Small Business Administration's (SBA) efforts to ensure that the HUBZone Program fulfills its intended purpose. Permit me to respond to each of the additional questions that you have raised.

1. *In response to my question about what steps, if any, SBA is taking to improve the program's stability to target and spur economic development in the neediest communities, you wrote that SBA "does not have a role in determining which firms are awarded contracts" and "can only impact community economic development outcomes only [sic] in the aggregate."*
 - a. *To what extent does SBA, with its 68 District Offices, collaborate with state and local governments, regional development organizations, and private-sector entities such as local chambers of commerce to advance the mission of the HUBZone program?*
 - b. *In light of the assertions above, how specifically is SBA pursuing ways to leverage the "opportunity zones" created by the 2017 tax law with the contracting opportunities of HUBZones, as stated in your letter?*

SBA's 68 District Offices across the country actively conduct outreach efforts for the HUBZone program. District Offices conduct a variety of events with economic development organizations such as trade groups, local chambers of commerce, and city and state economic development agencies. With varying economic landscapes across the country, the District Offices tailor their HUBZone events according to their market needs. For example, they may conduct training in

designated HUBZone areas and promote the program to increase participation by engaging small businesses that may be eligible for the HUBZone program. District Offices with strong markets for HUBZone contracts engage with trade organizations, chambers of commerce and other local economic development groups to partner and conduct targeted events together. Engaging the small business community collaboratively creates more effective marketing for the HUBZone program. In many markets HUBZone outreach efforts are conducted in partnership with Native American reservations and tribal leadership since Indian Lands are qualified HUBZone areas.

Additionally, in FY2019, SBA launched an early engagement initiative working with District Offices, Procurement Technical Assistance Centers (PTACs), and SBA's resource partners to support clients seeking to become certified in the HUBZone program. Currently there are 17 participating entities. In the 3rd quarter of FY2019, we trained a combined number of 145 SBA District Office staff and resource partner counselors via webinar on the early engagement initiative. Anecdotally, we are seeing a much higher approval rate as these applicants are submitting substantially more complete applications. We plan to expand this initiative in FY2020 to engage more District Offices and partners.

Regarding Opportunity Zones, SBA is currently drafting regulations to incentivize more small business participation as well as implement Governor Designated HUBZones. The National Defense Authorization Act for Fiscal Year 2018, Pub. L. 115-91, provides authority for Governors to petition SBA to include additional non-metropolitan areas as designated HUBZones. SBA anticipates that included within the covered areas that a Governor may seek to be designated as a qualified HUBZone area are Opportunity Zones that do not otherwise qualify as HUBZones.

2. *Your response list the HUBZone program's "robust protest component" among the ways to combat fraud, waste and abuse, yet it results in only 25-40 adjudications per year. If SBA dismisses a protest on a technicality, does it take any steps to investigate the allegation(s) at issue? Outside of certification processes, how does SBA proactively detect fraud, waste and abuse in the HUBZone program?*

HUBZone protests are dismissed if they are not filed by an interested party, untimely, or not specific. Where a protest is dismissed because it was untimely or not filed by an interested party, and the protest contains allegations or information leading SBA to believe the protested firm is not eligible for award, SBA can adopt the protest allegations as its own and file its own protest. This is because the HUBZone protest regulations provide that SBA is always an interested party and that protests filed by SBA are always considered timely. 13 C.F.R. 126.103 ("Interested party means any concern that submits an offer for a specific HUBZone sole source or set-aside contract (including Multiple Award Contracts) or order, ... the contracting activity's contracting officer, or SBA."); 13 C.F.R. 126.801(d)(3) ("Any protest submitted after the time limits is untimely, unless it is from SBA or the CO.")

In the past, SBA has used this authority to adopt protests that were dismissed as untimely or were not filed by an interested party, in order to investigate the allegations at issue in the protest.

Protests are dismissed for lack of specificity when they do not contain specific facts or allegations. 13 C.F.R. § 126.801(b). Since such protests would not contain specific information calling into question the eligibility of the protested concern, SBA would generally not adopt an unspecific protest as its own.

SBA also conducts site visits on 10% of the HUBZone portfolio each year. This is approximately 500-600 annually depending on the number of certified firms. In addition to the site visits, SBA conducts program exams annually using a risk-based approach. Any firm that has received \$750,000 or more in contracts during the preceding two fiscal years will be subject to a program exam. Each of these firms are included in the list of firms receiving a site visit as well. HUBZone-certified firms for which HUBZone status protests are dismissed during the previous fiscal year for untimeliness, lack of specificity, or lack of protestor standing are also include in the list of companies that will receive a program exam, thus allowing SBA to review full documentation including a site visit to determine whether the firm in fact remains eligible.

3. *Your response describes a first level of review during the initial certification of firms that “consists of analysis of an on-line application, documentation corroborating assertions, contained in the on-line application, and independent Internet research.”*

A March 2019 SBA Office of Inspector General (OIG) Review (Report No 19-08) found no evidence that HUBZone analysts had conducted other internet research or used publicly available mapping software to check the principal office locations for two ineligible firms. According to the report, the analysis did not conduct additional research on these firms because they were deemed low risk. But the report also noted that the HUBZone Program Office did not establish criteria for determining risk levels. The OIG recommended SBA updated and implement HUBZone guidance in response to its findings.

Please describe the steps SBA is taking to implement OIG’s recommendation, and whether SBA expects to complete the final action on this recommendation by October 31, 2019 as noted in the OIG report.

In response to the OIG recommendation, SBA has updated the relevant chapters in the Standard Operating Procedures for the HUBZone program. The chapters have completed internal clearance and the final edits are being incorporated to publish by the October 31, 2019 due date. Staff will be trained on the updated procedures to ensure compliance.

Additionally SBA had conducted program exams on the firms identified in the report and is in the process of reviewing the program exam findings to make final determinations. We will continue to follow the appropriate process for any firm that we have determined should be decertified. We currently expect to meet the October 31 deadline and are working closely with the Office of Inspector General should we require an extension to follow the process for decertification and any subsequent debarment if deemed appropriate.

4. *The Government Accountability Office, in a 2015 report (GAO-15-234), found that SBA “lacks key controls for its recertification process,” and it recommended that SBA’s Administrator “conduct an assessment of the recertification process and implement additional controls....” What is the status of SBA’s actions regarding this recommendation, which remains open?*

With regards to the recommendations from the Government Accountability Office 2015 report (GAO-15-234), SBA submitted our response to GAO on September 11, 2019. SBA issued two notices on Risk-Based Guidance Review, a notice on changes in geographic eligibility, and a notice on changes in HUBZone program regulations:

- Policy Notice for HUBZone Program – Risk-Based Guidance – Reviews of Initial Applications and Recertification – issued March 28, 2018
- Procedures for Notification of Changes in Geographical Eligibility of HUBZone Areas – issued June 26, 2019
- Procedures for Notification of Changes in HUBZone Program Regulations – issued June 26, 2019
- Policy Notice for HUBZone Program – Risk Based Guidance – Review of Initial Applications and Recertification – issued July 24, 2019

Along with the procedural notices, SBA has also updated the HUBZone Standard Operating Procedures and has provided guidance to staff regarding a risk-based approach to conducting recertifications and risk management in the HUBZone Program, entitled Strategy for Managing Risk in the HUBZone Program, dated December 17, 2018.

For all firms, the Certification Letter contains the following language regarding firm responsibilities relating to geographical changes, regardless of whether their principal offices are located in redesignated areas. This language is included so companies are aware of any changes that occur, particularly at the time of recertification.

The Firm's Responsibilities as a HUBZone certified concern.

As a HUBZone certified concern, the program benefits the firm may receive come with important responsibilities, including:

Keeping up-to-date on the HUBZone geographical designations by visiting the HUBZone website at <http://www.sba.gov/content/HUBZone-maps>.

Check SBA’s HUBZone mapping pages to determine whether changes in HUBZone area designations impact, or will impact, the firm’s eligibility. Note that changes in geographical designations may critically affect the firm’s compliance with Program requirements that its principal office be located in a HUBZone, and/or that at least 35% of its employees reside in a HUBZone.

Sign up to receive HUBZone News Updates by entering your email address at <https://public.govdelivery.com/accounts/USSBA/subscriber/new>. Once there, expand the "SBA Initiatives" subscription topic, select HUBZone News, and click "Next." This is the simplest single step you can take to keep current on key program changes that may affect the firm's eligibility.

Note: In accordance with the National Defense Authorization Act of 2018 - Section 1701, areas that would have lost HUBZone geographical eligibility during 2018 and 2019, through expiration of redesignated status, will retain their geographical eligibility until the results of the 2020 Census that impact HUBZone areas are released - expected to be December 31, 2021. For forward planning purposes, if the firm's principal office is located, or some of its employees reside, in such areas, you should consider actions necessary to maintain program compliance that date.

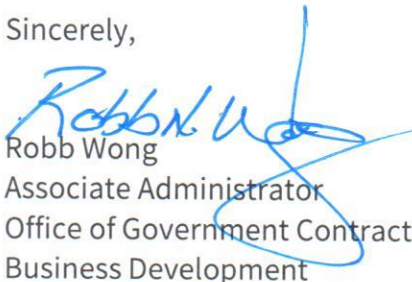
For firms having principal offices located in redesignated areas, the certification letter contains the following additional language.

ATTENTION: The firm's principal office address is currently in a HUBZone redesignated area. In order to maintain the certification, you must analyze how the ending of the HUBZone designation for this area impacts the firm's principal office and 35% employee HUBZone residency requirements. The HUBZone Program will propose decertification of the firm on or after the date the area's redesignation ends. For more information, review the 'Maintaining Certification; Decertification' section of the Frequently Asked Questions.

We believe that our compiled responses to the Government Accountability Office will fully address the outstanding recommendations in the report.

We appreciate your continued support of the SBA programs and services and your concerns for the Wyoming small business community. Should you or your staff have additional questions in this matter, please contact the SBA's Office of Congressional and Legislative Affairs at 202-205-6700.

Sincerely,



Robb Wong
Associate Administrator
Office of Government Contracting and
Business Development