



Small Business Administration HUBZone Program

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October 22, 2010

Congressional Research Service

7-5700

www.crs.gov

R41268

Summary

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 small business federal contracting assistance program “whose primary objective is job creation and increasing capital investment in distressed communities.” It provides participating small businesses located in areas with low income, high poverty rates, or high unemployment rates with contracting opportunities in the form of “set-asides,” sole-source awards, and price-evaluation preferences.

In FY2009, the federal government awarded contracts valued at \$13.1 billion to HUBZone certified businesses, with \$3.4 billion of that amount awarded through the HUBZone program. The program’s total administrative cost is an estimated \$11.7 million. In FY2010, it received an appropriation of \$2.2 million, with the additional cost of administering the program provided by the SBA’s appropriation for general administrative expenses.

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. Some Members have called for the program’s termination. Others have recommended that the SBA continue its efforts to improve its administration of the program, especially its efforts to prevent fraud.

This report examines the arguments presented both for and against targeting assistance to geographic areas with specified characteristics, such as low income, high poverty, or high unemployment, as opposed to providing assistance to people or businesses with specified characteristics. It then assesses the 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, the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act of 1997), which authorized the program.

The report also 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. The report includes an analysis of (1) the SBA’s administration of the program, (2) the SBA’s performance measures, and (3) the potential effect of the 2010 decennial census on which areas qualify as a HUBZone.

Congressional actions on several bills during the 111th Congress are also examined, including S. 3020, the HUBZone Improvement Act of 2010, which would extend for three years HUBZone eligibility for firms that lose their HUBZone eligibility due to the release of 2010 decennial census economic data and require the SBA to implement several GAO recommendations designed to improve the SBA’s administration of the program; and H.R. 5297, the Small Business Jobs Act of 2010, which was signed into law (P.L. 111-240) by President Obama on September 27, 2010. It amends the Small Business Act to remove certain language that had prompted federal courts and GAO to find that HUBZone set-asides have “precedence” over other small business set-asides.

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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 small business federal contracting assistance program “whose primary objective is job creation and increasing capital investment in distressed communities.”¹ It provides participating small businesses located in areas with low income, high poverty rates, or high unemployment rates with contracting opportunities in the form of “set-asides,” sole-source awards, and price-evaluation preferences.²

The Competition in Contracting Act of 1984 generally requires “full and open competition” for government procurement contracts.³ 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. It is the most commonly used mechanism in the HUBZone program, accounting for about 86% of HUBZone program contracts and 70% of HUBZone program contract dollars. A sole-source award is a federal contract awarded, or proposed for award, without competition. Sole-source awards account for about 8% of HUBZone program contracts and 4% of HUBZone program contract dollars. Also, in any full and open competition for a federal contract “the price offered by a qualified HUBZone business shall be deemed as being lower than the price of another offeror if the HUBZone business price offer is not more than 10 percent higher than the other offer.”⁴ Price-evaluation preferences account for about 6% of HUBZone program contracts and 26% of HUBZone program contract dollars.⁵

In FY2009, the federal government awarded contracts valued at \$13.1 billion to HUBZone certified businesses, with \$3.4 billion of that amount awarded through the HUBZone program to 1,725 HUBZone-certified businesses.⁶ The program’s FY2010 total administrative cost is an

¹ U.S. Small Business Administration, *Fiscal Year 2011 Congressional Budget Justification and FY2009 Annual Performance Report* (Washington: GPO, 2010), p. 33.

² Henry Beale and Nicola Deas, “The HUBZone Program Report,” Washington, DC: Microeconomic Applications, Inc., prepared for the U.S. Small Business Administration, Office of Advocacy, May 2008, p. i, <http://www.sba.gov/advo/research/rs325tot.pdf>. Sole-source awards under the HUBZone program can be made only if the anticipated award price of the contract will not exceed \$6.5 million for manufacturing contracts or \$4.0 million for other contract opportunities, and the contracting officer believes that 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); and 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.

³ 41 U.S.C. § 253(b)(1); and 41 U.S.C. § 259(b). For more on competition in federal contracting, see CRS Report R40516, *Competition in Federal Contracting: An Overview of the Legal Requirements*, by Kate M. Manuel.

⁴ Henry Beale and Nicola Deas, “The HUBZone Program Report,” Washington, DC: Microeconomic Applications, Inc., prepared for the U.S. Small Business Administration, Office of Advocacy, May 2008, p. i, <http://www.sba.gov/advo/research/rs325tot.pdf>.

⁵ *Ibid.*

⁶ Federal procurement data generated from the U.S. General Services Administration, Federal Procurement Data System - Next Generation, Washington, DC, <https://www.fps.gov/fpsdng/>. HUBZone program data provided by the U.S. Small Business Administration, Office of Legislative Affairs, correspondence with the author, May 4, 2010.

estimated \$11.7 million. It received a FY2010 appropriation of \$2.2 million, with the additional cost of administering the program covered by the SBA's appropriation for general administrative expenses.⁷

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This report examines the arguments presented both for and against targeting assistance to geographic areas with specified characteristics, such as low income, high poverty, or high unemployment, as opposed to providing assistance to people or businesses with specified characteristics. It then assesses the 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, the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act of 1997), which authorized the program.

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Targeting Assistance to Geographic Areas

The HUBZone program was authorized by P.L. 105-135, the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act of 1997).⁹ Senator Christopher S. "Kit" Bond, the

⁷ U.S. Small Business Administration, *Fiscal Year 2011 Congressional Budget Justification and FY 2009 Annual Performance Report* (Washington: GPO, 2010), pp. 18, 72. Note: Congress provides an appropriation for the SBA's non-credit programs (\$185.3 million in FY2010) and includes guidance in its accompanying committee report concerning funding for the HUBZone program. The FY2010 appropriation amount cited here (\$2.2 million) is the appropriation amount provided by the SBA in its FY2011 congressional budget justification report.

⁸ 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), pp. 1-3, 28-31.

⁹ 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. The first HUBZone contract was issued on April 8, 1999. See U.S. Congress, Senate Committee on Small Business, (continued...)

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."¹⁰ Its enactment was part of a broader debate that had been underway since the late 1970s concerning whether the federal government should target assistance to geographic areas with specified characteristics, such as low income, high poverty, or high unemployment, as opposed to providing assistance to people or businesses with specified characteristics.

Discussion

The idea of targeting government assistance to geographic areas with specified characteristics, as opposed to targeting government assistance to people or businesses with specified characteristics, has 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, which provide government regulatory and tax relief, in economically distressed areas as a means to encourage entrepreneurs "to pursue profit with minimum governmental restrictions."¹¹ 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 regulatory relief in those areas were "useful but not decisive economic development tools for distressed communities."¹²

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 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 it as a replacement, as opposed to a supplement, for existing government assistance programs.¹³ 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

(...continued)

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.

¹⁰ 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.

¹¹ 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.

¹² *Ibid.*

¹³ Stuart M. Butler, *Enterprise Zones: Greenlining the Inner Cities* (New York: Universe Books, 1981).

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 co-sponsored with Representative Kemp H.R. 3824, the Urban Jobs and Enterprise Zone Act of 1981.¹⁴

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.”¹⁵ 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.¹⁶

Others opposed the idea because they viewed it as a partisan extension of supply-side economics.¹⁷ 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.”¹⁸ Also, some economists argued that it would be more efficient to let the private market determine where businesses locate rather than have the government enact policies that encourage businesses to locate, or relocate, in areas they would otherwise avoid. In their view, “the locational diversion of economic activity reduces or may outweigh gains from the creation of economic activity.”¹⁹

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).²⁰ In the meantime, 37 states and the District of Columbia had initiated their own

¹⁴ 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.

¹⁵ 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.

¹⁶ Ibid.

¹⁷ 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.

¹⁸ 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.

¹⁹ Herbert Grubel, “Review of Enterprise Zones: Greenlining the Inner Cities, by Stuart M. Butler,” *Journal of Economic Literature*, vol. XX (December 1982), p. 1616.

²⁰ In 1987, Title VII of P.L. 100-242, the Housing and Community Development Act, authorized the Department of Housing and Community 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.

enterprise zone programs.²¹ 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.”²² Evaluations of federal enterprise zones would later reach similarly mixed findings.²³

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 presented 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.²⁴

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.”²⁵ Others argued that

²¹ 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.

²² 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.

²³ U.S. Government Accountability Office, *Community Development: Federal Revitalization Programs Are Being Implemented, but Data on the Use of Tax Benefits Are Limited*, GAO-04-306, March 5, 2004, <http://www.gao.gov/new.items/d04306.pdf>; U.S. Government Accountability Office, *Empowerment Zone and Enterprise Community Program: Improvements Occurred in Communities, but the Effect of the Program Is Unclear*, GAO-06-727, September 22, 2006, <http://www.gao.gov/new.items/d06727.pdf>; and U.S. Government Accountability Office, *Revitalization Programs: Empowerment Zones, Enterprise Communities, and Renewal Communities*, GAO-10-464R, March 12, 2010, <http://www.gao.gov/new.items/d10464r.pdf>.

²⁴ 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. 26.

²⁵ 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.

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.²⁶

HUBZone critics also argued that it would compete with, and potentially diminish the effectiveness of, the SBA's Minority Small Business and Capital Ownership Development 8(a) program.²⁷ That 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."²⁸ 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 FY2008, 9,462 firms participated in the 8(a) program, and the federal government spent \$6.3 billion on contracts with 8(a) firms.²⁹

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 later, in recent years, the SBA's administration of the HUBZone program and the program's effectiveness in assisting economically distressed areas have been criticized. For example, the U.S. Government Accountability Office (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 Also, Representative Nydia M. Velázquez, chair of the House Committee on Small Business, has argued that

²⁶ Ibid., p. 36.

²⁷ 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.

²⁸ 13 C.F.R. § 124.101.

²⁹ For further analysis of the 8(a) program, see CRS Report R40744, *The "8(a) Program" for Small Businesses Owned and Controlled by the Socially and Economically Disadvantaged: Legal Requirements and Issues*, by John R. Luckey and Kate M. Manuel.

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 U.S. Government Accountability Office, *HUBZone Program: Fraud and Abuse Identified in Four Metropolitan Areas*, GAO-09-440, March 25, 2009, p. 5, <http://www.gao.gov/new.items/d09440.pdf>. Also see U.S. Government Accountability Office, *Small Business Administration: Undercover Tests Show HUBZone Program Remains Vulnerable to Fraud and Abuse*, GAO-10-759, June 25, 2010, pp. 2, 4, 5, <http://www.gao.gov/new.items/d10759.pdf>; U.S. Government Accountability Office, *HUBZone Program: Fraud and Abuse Identified in Four Metropolitan Areas* (continued...)

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

There are currently five HUBZone types (or classes):

- qualified census tracts (QCTs),
- qualified non-metropolitan counties,
- qualified Indian Reservations/Indian Country,
- military bases closed under the Base Realignment and Closure Act (BRAC), and
- difficult development areas (DDAs).³³

In addition, QCTs and qualified non-metropolitan counties that lose their eligibility due to the release of new economic data may temporarily retain their eligibility by becoming a redesignated area.

Qualified Census Tracts

QCTs are determined by the U.S. Housing and Urban Development (HUD) for its low-income housing tax credit program. The current criteria are

- at least 50% of households with income below 60% of the median gross income of the metropolitan statistical area (in metropolitan census tracts) or the median

(...continued)

(congressional testimony), GAO-09-519T, March 25, 2009, pp. 2-9, <http://www.gao.gov/new.items/d09519t.pdf>; and U.S. Government Accountability Office, *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, <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 non-metropolitan 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.

- gross income for all non-metropolitan areas of the state (in non-metropolitan census tracts) or
- a poverty rate of at least 25%.³⁴

About one-fifth (11,865) of all census tracts have QCT status.³⁵ Because QCT eligibility is derived from decennial census data, QCTs change relatively infrequently, typically as new data from each decennial census becomes available and when the Census Bureau undertakes a new delineation of census tracts. The Census Bureau typically reexamines its census tracts following each decennial census in an effort to keep them homogeneous with respect to population characteristics, economic status, and living conditions.³⁶ As a result of this delineation process, some census tracts may be enlarged and others may be split into two or more census tracts. This can cause a change in the census tract's QCT status. The typical census tract has between 1,500 and 8,000 persons.

Qualified Non-metropolitan Counties

A qualified non-metropolitan county is any county that “was not located in a metropolitan statistical area at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986,” and in which

- the median household income is less than 80% of the non-metropolitan state median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce or
- 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.³⁷

About 44% (1,327) of all counties have qualified non-metropolitan county status.³⁸

The non-metropolitan county's median household income is derived from decennial Census data. If a county qualifies on this basis, its HUBZone status “is secure until publication of the data from the following census.”³⁹ The non-metropolitan county's unemployment rate is derived from annual data released by the Department of Labor's Bureau of Labor Statistics. As a result, if a county qualifies, or fails to qualify, on this basis, its HUBZone status can change as new data is released. As will be discussed, Congress created redesignated areas to delay the loss of HUBZone status for areas that lose HUBZone eligibility due to the release of new economic data.

³⁴ 13 C.F.R. § 126.103 and 26 U.S.C. § 42(d)(5)(C)(i).

³⁵ Data provided by the U.S. Small Business Administration, Office of Legislative Affairs, correspondence with the author, May 4, 2010.

³⁶ U.S. Census Bureau, “Census Tracts and Block Numbering Areas,” Washington, DC, http://www.census.gov/geo/www/cen_tract.html.

³⁷ 13 C.F.R. § 126.103.

³⁸ Data provided by the U.S. Small Business Administration, Office of Legislative Affairs, correspondence with the author, May 4, 2010.

³⁹ Henry Beale and Nicola Deas, “The HUBZone Program Report,” Washington, DC: Microeconomic Applications, Inc., prepared for the U.S. Small Business Administration, Office of Advocacy, May 2008, p. 146, <http://www.sba.gov/advo/research/rs325tot.pdf>.

The qualified non-metropolitan county designation is the only type of HUBZone that is determined by the SBA. The formula is set in law and the data is derived from other agencies, but the designation is made by the SBA.⁴⁰

Qualified Indian Reservation/Indian Country

P.L. 105-135, the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization 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.⁴¹

There are 659 qualified Indian reservations, Oklahoma tribal statistical areas, and Alaska Native village statistical areas.⁴² A private firm’s analysis of Indian reservation’s 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.⁴³

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). The military base’s HUBZone eligibility commences on the effective date of the 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.

⁴⁰ Ibid., p. 146. About 13% of qualified non-metropolitan counties were redesignated in 2003 as a metropolitan county due to a change in the criteria for determining metropolitan county status. Those counties were allowed to retain their HUBZone status pending the results of the 2010 decennial census.

⁴¹ Ibid., p. 160.

⁴² Data provided by the U.S. Small Business Administration, Office of Legislative Affairs, correspondence with the author, May 4, 2010.

⁴³ Henry Beale and Nicola Deas, “The HUBZone Program Report,” Washington, DC: Microeconomic Applications, Inc., prepared for the U.S. Small Business Administration, Office of Advocacy, May 2008, p. 163, <http://www.sba.gov/advo/research/rs325tot.pdf>.

Two military bases closed under BRAC are currently designated as a HUBZone.⁴⁴ It is anticipated that the provision of HUBZone eligibility to military bases closed under BRAC will be most useful to the 20 military bases targeted for closure during the 2005 BRAC round of closure reviews, “since the HUBZone status can be factored into the planning for the facility’s use.”⁴⁵ The most common projected final closure date for military bases under the 2005 BRAC round is during 2011.⁴⁶

Difficult Development Areas

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.”⁴⁷ These areas are designated annually by the Secretary of HUD “in accordance with section 42(d)(5)(C)(iii) of the Internal Revenue Code” which applies to HUD’s low-income housing tax credit program.⁴⁸ This section of the Internal Revenue Code defines a DDA “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.”⁴⁹ These areas may not exceed 20% of the population of a metropolitan statistical area or of a non-metropolitan area.

There are 67 HUBZone DDAs.⁵⁰ Most of Alaska (26 boroughs), American Samoa (4 districts), Hawaii (4 counties), much of Puerto Rico (25 counties), and all areas of the other U.S. territories and possessions are currently designated as a DDA.⁵¹

Redesignated Areas

One of the implicit goals of the HUBZone program is to improve the economic standing of the geographic areas receiving assistance so that they are no longer an economically distressed area. As a result, it could be argued that it is a program success when a QCT or a qualified non-metropolitan county loses its qualification as a HUBZone area when new economic data are

⁴⁴ Data provided by the U.S. Small Business Administration, Office of Legislative Affairs, correspondence with the author, May 4, 2010.

⁴⁵ Henry Beale and Nicola Deas, “The HUBZone Program Report,” Washington, DC: Microeconomic Applications, Inc., prepared for the U.S. Small Business Administration, Office of Advocacy, May 2008, p. 171, <http://www.sba.gov/advo/research/rs325tot.pdf>.

⁴⁶ Ibid.

⁴⁷ P.L. 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

⁴⁸ Ibid.

⁴⁹ U.S. Department of Housing and Urban Development, “Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2010,” 74 *Federal Register* 51305, October 6, 2009. Note: In making this determination, HUD calculates a ratio for each metropolitan area and non-metropolitan 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).

⁵⁰ Data provided by the U.S. Small Business Administration, Office of Legislative Affairs, correspondence with the author, May 4, 2010.

⁵¹ U.S. Small Business Administration, “HUBZone Program Map,” Washington, DC, <http://map.sba.gov/hubzone/init.asp>; and U.S. Department of Housing and Urban Development, “Qualified Census Tract Table Generator: Difficult Development Area Tables,” Washington, DC, <http://qct.huduser.org/>.

published. However, because “small business concerns that locate to a HUBZone may lose their eligibility in only one year due to changes in such data” and out of concern 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.⁵² The provision provided census tracts and non-metropolitan counties that lose HUBZone eligibility due to the release of new economic data an automatic extension “for the 3-year period following the date on which the census tract or nonmetropolitan county ceased to be so qualified.”⁵³ The act labeled census tracts and non-metropolitan counties that receive an extension of HUBZone eligibility “redesignated areas.”

Subsequently, P.L. 108-447, the Consolidated Appropriations Act, 2005, effectively extended the eligibility of HUBZone redesignated areas by allowing them to retain eligibility for three years or until the public release of data from the 2010 Census, whichever is later:

Redesignated area means any census tract or any non-metropolitan county that ceases to be a qualified HUBZone, except that such census tracts or nonmetropolitan counties may be “redesignated areas” only until the later of: (1) The date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or (2) Three years after the date on which the census tract or non-metropolitan county ceased to be so qualified.

The date on which the census tract or non-metropolitan county ceases to be qualified is the date that the official government data, which affects the eligibility of the HUBZone, is released to the public.⁵⁴

In 2008, GAO compared the economic characteristics of QCTs and qualified non-metropolitan counties to redesignated areas. It reported that it “found a marked difference” in their economic characteristics. For example, GAO reported that approximately 60% of QCTs (excluding redesignated areas) had a poverty rate of 30% or more compared to approximately 4% of redesignated QCTs. Also, about 75% of QCTs (excluding redesignated areas) had a median household income that was less than 60% of the metropolitan area median household income compared to about 10% of redesignated QCTs.⁵⁵

HUBZone Businesses Defined

Firms must be certified by the SBA to participate in the HUBZone program. There are currently 7,567 certified HUBZone businesses.⁵⁶ 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;

⁵² U.S. Small Business Administration, “Small Business Size Regulations; Government Contracting Programs; HUBZone Program,” 67 *Federal Register* 3828, January 28, 2002.

⁵³ P.L. 106-554, the HUBZones in Native America Act of 2000 (Title VI, the Consolidated Appropriations Act, 2001).

⁵⁴ 13 C.F.R. § 126.103.

⁵⁵ U.S. Government Accountability Office, *Small Business Administration: Additional Actions are Needed to Certify and Monitor HUBZone Businesses and Assess Program Results*, GAO-08-643, June 17, 2008, p. 18, <http://www.gao.gov/new.items/d08643.pdf>.

⁵⁶ Data provided by the U.S. Small Business Administration, Office of Legislative Affairs, correspondence with the author, May 4, 2010.

- be at least 51% owned and controlled by U.S. citizens, or 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;⁵⁷
- represent, as provided in the application, that it will “attempt to maintain” having 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives;
- 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);
- 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.⁵⁸

Until recently, 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. As will be discussed, in response to reports of applicant fraud, the SBA has reengineered its applicant review process and now takes, depending on the complexity of the application and the need for additional information, from 5 to 12 months to make its determination.

If the SBA approves the application, it will send a written notice to the business and automatically enter it on a list of certified HUBZone businesses. A decision to deny eligibility must be in writing, and state the specific reasons for denial.⁵⁹

Until recently, 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.”⁶⁰ 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

⁵⁷ Employees must live in a primary residence within that area for at least 180 days or be a currently registered voter in that area. The HUBZone definition of employee changed on May 3, 2010. Previously, the definition was based on full-time equivalency and only permanent positions were counted. 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 U.S. Small Business Administration, “HUBZone and Government Contracting,” *74 Federal Register* 56702, November 3, 2009.

⁵⁸ 13 C.F.R. § 126.200.

⁵⁹ 13 C.F.R. § 126.306.

⁶⁰ 13 C.F.R. § 126.401.

contract.⁶¹ 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 contract in the previous fiscal year.⁶²

Certified HUBZone small business concerns must recertify every three years to the SBA that they meet the requirements for being a HUBZone business.⁶³ 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.⁶⁴

HUBZone Federal Contracting Goals

Since 1978, federal agency heads have been required “to establish goals for small business participation in specified federal procurement contracts and to consult with and report to the SBA about such goals and their realization.”⁶⁵ 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.⁶⁶ Each federal agency was 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.”⁶⁷ 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 report to the Congress.⁶⁸

The SBA negotiates contracting goals with each federal agency and evaluates the agencies’ performance against these goals annually, using data from the Federal Procurement Data System – Next Generation, managed by the U.S. General Services Administration. This information is compiled into the official Small Business Goaling Report, which the SBA releases annually.

There are no punitive consequences for not meeting the small business procurement goals. However, the SBA’s Small Business Goaling Report is distributed widely, receives media attention, and serves to heighten public awareness of the issue of small business contracting. For example, agency performance as reported in the SBA’s Small Business Goaling Report is often

⁶¹ Ibid.

⁶² U.S. Small Business Administration, *Fiscal Year 2011 Congressional Budget Justification and FY2009 Annual Performance Report*, Washington, DC, pp. 72, 73, http://www.sba.gov/idc/groups/public/documents/sba_homepage/fy_2011_cbj_09_apr.pdf.

⁶³ 13 C.F.R. § 126.500.

⁶⁴ 13 C.F.R. § 126.501.

⁶⁵ P.L. 95-507, a bill to amend the Small Business Act and the Small Business Investment Act of 1958.

⁶⁶ P.L. 100-656, the Business Opportunity Development Reform Act of 1988.

⁶⁷ Ibid.

⁶⁸ Ibid.

cited by Members during their questioning of federal agency witnesses during congressional hearings.

P.L. 105-135, the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act of 1997), increased the federal government-wide goal for contracting with small businesses from 20% to 23%. It also established the following contracting goals for the HUBZone program: not less than 1% of the total value of all prime contract awards for FY1999, not less than 1.5% for FY2000, not less than 2% for FY2001, not less than 2.5% for FY2002, and not less than 3% for FY2003 and each fiscal year thereafter. P.L. 111-240, the Small Business Jobs Act of 2010, amended the HUBZone contracting goal to include the total value of all prime contract awards and subcontract awards.⁶⁹

The current federal small business contracting goals are

- at least 23% of the total value of all prime contract awards to small businesses for each fiscal year,
- 5% of the total value of all prime contract awards and subcontract awards to small disadvantaged businesses for each fiscal year,
- 5% of the total value of all prime contract awards and subcontract awards to women-owned small businesses,
- 3% of the total value of all prime contract awards and subcontract awards to HUBZone small businesses, and
- 3% of the total value of all prime contract awards and subcontract awards to service-disabled veteran-owned small businesses.⁷⁰

As shown in **Table 1**, in FY2009, federal agencies met the federal contracting goal for small disadvantaged businesses, but not the other goals. Federal agencies awarded 19.9% of the value of their contracts to small businesses, 6.2% to small disadvantaged businesses, 3.8% to women-owned small businesses, 2.4% to HUBZone small businesses, and 1.8% to service-disabled veteran-owned small businesses.⁷¹

Table 1. Federal Contracting Goals and Percent of FY2009 Federal Contract Dollars Awarded to Small Businesses, by Type

Business Type	Federal Goal	Percentage of FY2009 Federal Contract Dollars
Small Businesses	23.0%	19.9%
Small Disadvantaged Businesses	5.0%	6.2%
Women-Owned Small Businesses	5.0%	3.8%
HUBZone Small Businesses	3.0%	2.4%

⁶⁹ P.L. 111-240, the Small Business Jobs Act of 2010, Sec. 1347. Small Business Contracting Parity.

⁷⁰ 15 U.S.C. § 644(g)(1)-(2).

⁷¹ U.S. General Services Administration, Federal Procurement Data System - Next Generation, Washington, DC, <https://www.fpds.gov/fpdsng/>.

Business Type	Federal Goal	Percentage of FY2009 Federal Contract Dollars
Service-Disabled Veteran-Owned Small Businesses	3.0%	1.8%

Source: U.S. Small Business Administration, “FY2008 Government-Wide Scorecard,” Washington, DC, http://www.sba.gov/idc/groups/public/documents/sba_homepage/goals_08_gov_wide.pdf (federal goals); and U.S. General Services Administration, Federal Procurement Data System - Next Generation, Washington, DC, <https://www.fpds.gov/fpdsng/> (contract dollars).

Note: By statute, in FY2009, federal contracting goals for small businesses overall and for HUBZone small businesses do not include the value of subcontract awards.

Congressional Issues

As mentioned previously, congressional interest in the HUBZone program has increased in recent years, primarily due to reports of fraud in the program. GAO was asked by Congress to review the SBA’s administration of the HUBZone program and it has issued several recommendations designed to strengthen the SBA’s fraud control measures.⁷² GAO has also argued that the SBA lacks adequate performance measures to determine the HUBZone program’s effect on the economically distressed areas it is designed to assist.⁷³

Another issue of congressional interest is the potential effect of the release of 2010 decennial census data on HUBZone area eligibility. About one-third of QCTs (3,364 of 9,964) lost their HUBZone eligibility following the release of the 2000 decennial census data and almost as many census tracts (3,313) gained HUBZone eligibility.⁷⁴

As will be discussed, Congress is currently considering legislation that would require the SBA to implement GAO’s recommendations concerning the SBA’s administration of the program and to revise the SBA’s HUBZone performance measures. Congress is also considering legislation that would extend HUBZone eligibility for those HUBZone areas that lose eligibility due to the release of 2010 decennial census data.

In addition, Congress recently 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.⁷⁵ Providing the HUBZone program

⁷² U.S. Government Accountability Office, *HUBZone Program: Fraud and Abuse Identified in Four Metropolitan Areas*, GAO-09-519T, March 25, 2009, p. 2, <http://www.gao.gov/new.items/d09519t.pdf>.

⁷³ U.S. Government Accountability Office, *Small Business Administration: Additional Actions are Needed to Certify and Monitor HUBZone Businesses and Assess Program Results*, GAO-08-643, June 17, 2008, pp. 3-5, 22-30, 33-37, <http://www.gao.gov/new.items/d08643.pdf>; U.S. Government Accountability Office, *Small Business Administration: Status of Efforts to Address Previous Recommendations on the HUBZone Program*, GAO-09-532T, March 25, 2009, pp. 3, 8, 9, <http://www.gao.gov/new.items/d09532t.pdf>; and U.S. Government Accountability Office, *Small Business Administration: Undercover Tests Show HUBZone Program Remains Vulnerable to Fraud and Abuse*, GAO-10-759, June 25, 2010, <http://www.gao.gov/new.items/d10759.pdf>.

⁷⁴ Henry Beale and Nicola Deas, “The HUBZone Program Report,” Washington, DC: Microeconomic Applications, Inc., prepared for the U.S. Small Business Administration, Office of Advocacy, May 2008, p. 136, <http://www.sba.gov/advo/research/rs325tot.pdf>.

⁷⁵ *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).

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, P.L. 111-240 struck “a contract opportunity shall” and replaced it with “a contract opportunity may.”⁷⁶ 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.⁷⁷

A related procurement issue is the potential consequence of changes to the definition used to determine eligibility for the SBA’s 7(a) and 504/CDC programs for the federal government’s small business procurement goaling program. P.L. 111-240, established an alternative size standard for the 7(a) and 504/CDC programs, which is expected to increase the number of businesses that are considered small. It could be argued that increasing the number of businesses considered small will make it easier for federal agencies to meet their goal of awarding at least 3% of the total value of all prime contract awards and subcontract awards to HUBZone small businesses. In addition, on October 1, 2010, the maximum contract award amounts that federal officials can set-aside for sole source awards under various small business contracting programs were increased to adjust for inflation.⁷⁸ For example, the maximum sole source contract award amounts for the HUBZone program were increased from not exceeding \$5.5 million for manufacturing contracts or \$3.5 million for other contract opportunities to not exceeding \$6.5 million for manufacturing contracts or \$4.0 million for other contract opportunities. It could be argued that these changes will make it difficult to compare the results of the federal government’s small business procurement goaling program with previous year results and diminishes the goaling program’s value as a tool to measure federal agency progress in awarding contracts to small businesses. It is possible that Congress may consider proposals to adjust the goals to account for these changes.

⁷⁶ For further information and legal analysis, see CRS Report R40591, *Set-Asides for Small Businesses: Recent Developments in the Law Regarding Precedence Among the Set-Aside Programs and Set-Asides Under Indefinite-Delivery/Indefinite-Quantity Contracts*, by Kate M. Manuel. Also see U.S. Government Accountability Office, *Mission Critical Solutions*, B-401057, May 4, 2009, <http://www.gao.gov/decisions/bidpro/401057.pdf>; and Office of Legal Counsel, Department of Justice, “Permissibility of Small Business Administration Regulations Implementing the Historically Underutilized Business Zone, 8(a) Business Development, and Service-Disabled Veteran-Owned Small Business Concern Programs,” August 21, 2009, <http://www.justice.gov/olc/2009/sba-hubzone-opinion082109.pdf>.

⁷⁷ For further analysis of the 8(a) program, see CRS Report R40744, *The “8(a) Program” for Small Businesses Owned and Controlled by the Socially and Economically Disadvantaged: Legal Requirements and Issues*, by John R. Luckey and Kate M. Manuel.

⁷⁸ P.L. 108-375, Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Sec. 807. Inflation adjustment of acquisition-related dollar thresholds requires an adjustment for inflation every five years of all acquisition-related thresholds. See 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.

Program Administration

SBA's Office of Inspector General Audits

The SBA's administration of the HUBZone program has been criticized for a number of years. In 2003, the SBA's Office of Inspector General (OIG) completed an audit of 15 HUBZone firms operating in Idaho Falls, ID, after receiving a complaint that a relatively large number of certified HUBZone firms in that city may not be qualified to participate in the program.⁷⁹ At that time, HUBZone businesses self-certified in their application materials that they met the requirements for being a HUBZone business. Validating documentation, such as a copy of a business owner's birth certificate as proof of U.S. citizenship or a copy of the lease agreement to verify the business concern's principal office's location within a qualified HUBZone, were not required. The SBA OIG's audit found that

over two-thirds of the 15 subject companies were either not in compliance with HUBZone eligibility requirements or had presumably gone out of business. We also found that the Office of HUBZone Empowerment's internal controls were inadequate to ensure that only eligible firms are certified and remain certified. Therefore, there is little assurance that the program will provide increased employment, investment and economic development for depressed areas. Since ineligible companies could receive HUBZone contracts, the program is also vulnerable to federal contacting fraud.⁸⁰

As a result of that audit, the SBA revised its program examination and recertification processes to provide "a more careful review" of HUBZone applications and implemented an online application process that was designed to "prescreen" potential applicants, "resulting in only those most-qualified actually submitting a completed application."⁸¹ Citing the efficiencies brought about by the automation of HUBZone applications, the SBA reduced the number of staff in the Office of the HUBZone Program, which was responsible for program examinations, from 12 full-time equivalent employees in 2004 to eight in 2006.⁸²

In 2006, the SBA OIG reported that there was a two-year backlog in HUBZone program examinations. It reported that it was concerned "that workload resources had not been adequately devoted to eliminating this two-year backlog" and 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."⁸³

⁷⁹ U.S. Small Business Administration, Office of the Inspector General, "Audit Report of the Eligibility of 15 HUBZone Companies and a Review of the HUBZone Empowerment Contracting Program's Internal Controls," Washington, DC, January 22, 2003, http://www.sba.gov/idc/groups/public/documents/sba/oig_gcdb_03-05.pdf.

⁸⁰ *Ibid.*, p. 3.

⁸¹ U.S. Small Business Administration, Office of the Inspector General, "HUBZone Program Examination and Recertification Processes," Washington, DC, May 23, 2006, p. 5, http://www.sba.gov/idc/groups/public/documents/sba/oig_gcdb_6-23.pdf.

⁸² U.S. Small Business Administration, "SBA Budget Request & Performance Plan: FY2004 Congressional Submission," Washington, DC, p. 44, http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_abt_budget_3.pdf.

⁸³ U.S. Small Business Administration, Office of the Inspector General, "HUBZone Program Examination and Recertification Processes," Washington, DC, May 23, 2006, pp. 3, 6, http://www.sba.gov/idc/groups/public/documents/sba/oig_gcdb_6-23.pdf.

As a result of the SBA OIG's second, follow-up audit of the HUBZone program, the SBA committed to reviewing 5% of all certifications "through a full-scale program of examinations."⁸⁴ The audit also resulted in heightened congressional attention to the issue of potential fraud within the HUBZone program.

GAO's Audits

In 2007, Representative Nydia M. Velázquez, chair of the House Committee on Small Business, asked GAO to review the HUBZone program, including the criteria and processes that the SBA uses to identify and map HUBZone areas, the mechanisms the SBA uses to ensure that only eligible small businesses participate in the program, and the actions the SBA has taken to assess the program's results.⁸⁵

GAO conducted its audit of the SBA's administration of the HUBZone program from August 2007 through June 2008. It reported on June 17, 2008, 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).⁸⁶

GAO released another report on the HUBZone program on July 17, 2008. It reported that it had "identified substantial vulnerabilities in SBA's application and monitoring process, clearly demonstrating that the HUBZone program is vulnerable to fraud and abuse."⁸⁷ 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."⁸⁸ 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 requirement."⁸⁹ In

⁸⁴ 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.

⁸⁵ U.S. Government Accountability Office, *Small Business Administration: Additional Actions are Needed to Certify and Monitor HUBZone Businesses and Assess Program Results*, GAO-08-643, June 17, 2008, p. i, <http://www.gao.gov/new.items/d08643.pdf>.

⁸⁶ *Ibid.*, pp. 1-5.

⁸⁷ U.S. Government Accountability Office, *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, <http://www.gao.gov/new.items/d08964t.pdf>.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

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.”⁹⁰

The SBA responded to GAO’s findings by announcing that it would undertake “a complete re-engineering of the program” designed to

- ensure that its HUBZone maps were up-to-date, and
- minimize program risk by collecting additional supporting documentation of all HUBZone applicants to support program eligibility.⁹¹

In response to GAO’s findings and the SBA’s response to those findings, Representative Velázquez asked GAO to determine “whether cases of fraud and abuse in the HUBZone program exist outside of the Washington, D.C. metropolitan area” and to assess the SBA’s efforts to establish an effective fraud prevention system for the HUBZone program.⁹²

On March 25, 2009, GAO reported that, as of that date

- the SBA had updated its HUBZone map but had not implemented procedures to ensure that it remains accurate,
- had made little progress in ensuring the eligibility of firms in the HUBZone program, and
- had eliminated its backlog of recertifications but had not established a process or procedures to prevent future backlogs.⁹³

GAO also reported that it had 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 conducted its analysis of HUBZone businesses in those four areas from September 2008 through March 2009. GAO reported 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.”⁹⁴

The SBA responded to GAO’s audits and congressional criticism of its administration of the HUBZone program by “reengineering business processes to reduce fraud and abuse within the program.”⁹⁵ In 2009, it “moved from verifying a sample of HUBZone firms to verifications of

⁹⁰ Ibid., pp. 5, 10-20.

⁹¹ U.S. Small Business Administration, *Fiscal Year 2010 Congressional Budget Justification*, Washington, DC, p. 65, http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_budget_2010_justification.pdf.

⁹² U.S. Government Accountability Office, *HUBZone Program: Fraud and Abuse Identified in Four Metropolitan Areas*, GAO-09-440, March 25, 2009, p. 2, <http://www.gao.gov/new.items/d09440.pdf>.

⁹³ U.S. Government Accountability Office, *Small Business Administration: Status of Efforts to Address Previous Recommendations on the HUBZone Program*, GAO-09-532T, March 25, 2009, pp. 5-8, <http://www.gao.gov/new.items/d09532t.pdf>.

⁹⁴ U.S. Government Accountability Office, *HUBZone Program: Fraud and Abuse Identified in Four Metropolitan Areas*, GAO-09-440, March 25, 2009, p. 7, <http://www.gao.gov/new.items/d09440.pdf>.

⁹⁵ U.S. Small Business Administration, *Fiscal Year 2011 Congressional Budget Justification and FY2009 Annual Performance Report*, Washington, DC, pp. 72, 73, http://www.sba.gov/idc/groups/public/documents/sba_homepage/fy_2011_cbj_09_apr.pdf.

100% of HUBZone firms receiving contracts in the previous fiscal year.”⁹⁶ 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 signature that they still conform to the eligibility requirements. Previous practice required firms to submit an electronic verification.⁹⁷

Karen Mills, the SBA’s Administrator, testified before the House Committee on Small Business on April 21, 2010, 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—from less than 100 in 2008 to over 900 in 2009. We’re on track to do more than 1,000 this year.”⁹⁸

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.”⁹⁹ 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 that the final HUBZone determination time frames currently “vary from 5 months to 12 months, with an average of 8 to 10 months.”¹⁰⁰

Recognizing that its processing time to certify HUBZone businesses may have adverse consequences for at least some of these businesses, the SBA placed on its website an explanation for the processing delays and the following notice to HUBZone applicants:

The SBA processing delays are a serious issue for applicants, especially for those wishing to bid on upcoming HUBZone contracts. Therefore, if you are a firm which has a pending application in process for more than 4 months and has an upcoming HUBZone set-aside contract on which it would like to bid, please contact our Help Desk to determine if we can provide you with a decision quickly.¹⁰¹

On June 25, 2010, GAO released another report concerning the SBA’s efforts to reduce fraud in the HUBZone program. GAO submitted applications for HUBZone certification for “four new bogus firms ... using false information and fabricated documents ... fictitious employee

⁹⁶ Ibid., p. 76.

⁹⁷ Ibid., pp. 72, 73.

⁹⁸ Testimony of Karen G. Mills, SBA Administrator, before the U.S. House of Representatives Committee on Small Business, “Accountability Update,” Washington, DC, April 21, 2010, <http://www.house.gov/smbiz/democrats/hearings/hearing-04-21-10-oversight/Mills.pdf>.

⁹⁹ U.S. Small Business Administration, “Application processing times remain significant, but are now decreasing,” Washington, DC, <http://www.sba.gov/hubzone/new/index.html>.

¹⁰⁰ Data provided by the U.S. Small Business Administration, Office of Legislative Affairs, correspondence with the author, May 4, 2010.

¹⁰¹ U.S. Small Business Administration, “Application processing times remain significant, but are now decreasing,” Washington, DC, <http://www.sba.gov/hubzone/new/index.html>.

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.”¹⁰² 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.¹⁰³ 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.”¹⁰⁴ It reported that

A simple Internet search by SBA could have revealed these as phony applications. While the agency has required more documentation in its application process since GAO’s July 2008 report, GAO’s testing shows that SBA does not adequately authenticate self-reported information and, for these cases, did not perform site visits to validate the addresses. Further, the changes have significantly increased the time it takes SBA to process applications. Specifically, SBA took 7 or more months to process each of the bogus applications—at least 6 months longer than for GAO’s previous investigations.¹⁰⁵

GAO also reported that in response to their test, SBA officials “stated that it was unreasonable to expect them to have identified our fictitious firms because of bogus documentation that we included in our applications,” that “the submission of false affidavits would subject an applicant to prosecution,” and that “competitors may identify fraudulent firms and likely protest if those firms were awarded a HUBZone contract.”¹⁰⁶ GAO also reported that SBA officials stated that “because of resource constraints, they primarily conduct site visits on certified firms that receive large prime HUBZone contracts.”¹⁰⁷ GAO argued that “while the threat of prosecution is an important deterrent, it does not help to identify firms that attempt to commit fraud, as our testing shows.”¹⁰⁸ GAO also argued that “while competitors may identify some ineligible firms that were awarded contracts, SBA is responsible for ensuring that only eligible firms participate in the HUBZone program.”¹⁰⁹ GAO also reported that “if the SBA had conducted site visits at the addresses of the firms represented in our applications, those applications would have been identified as fraudulent.”¹¹⁰

Legislation

S. 3020, the HUBZone Improvement Act of 2010, was introduced on February 23, 2010, and has been referred to the Senate Committee on Small Business and Entrepreneurship. It would require the SBA to implement GAO’s recommendations to

¹⁰² U.S. Government Accountability Office, *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, <http://www.gao.gov/new.items/d10759.pdf>.

¹⁰³ *Ibid.*, p. 4.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*, Highlights section.

¹⁰⁶ U.S. Government Accountability Office, *Small Business Administration: Undercover Tests Show HUBZone Program Remains Vulnerable to Fraud and Abuse*, GAO-10-920T, July 28, 2010, p. 3, <http://www.gao.gov/new.items/d10920t.pdf>.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

- 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 back log, and
- ensure small businesses meet the 35% HUBZone residency requirement at the time of bid as well as contract award.¹¹¹

The SBA has not formally responded to the legislation. It has argued at congressional hearings and in its FY2011 congressional budget justification report that it is taking steps to implement GAO's recommendations.¹¹²

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.¹¹³ 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)."¹¹⁴ 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."¹¹⁵

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 they "would then issue periodic reports accompanied by the underlying data."¹¹⁶

¹¹¹ 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.

¹¹² 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, SBA Administrator, before the U.S. House of Representatives Committee on Small Business, "Accountability Update," Washington, DC, April 21, 2010, <http://www.house.gov/smbiz/democrats/hearings/hearing-04-21-10-oversight/Mills.pdf>; and U.S. Small Business Administration, *Fiscal Year 2011 Congressional Budget Justification and FY2009 Annual Performance Report*, Washington, DC, pp. 72, 73, http://www.sba.gov/idc/groups/public/documents/sba_homepage/fy_2011_cbj_09_apr.pdf.

¹¹³ U.S. Government Accountability Office, *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, <http://www.gao.gov/new.items/d08643.pdf>.

¹¹⁴ *Ibid.*, p. 34.

¹¹⁵ *Ibid.*, p. 45.

¹¹⁶ *Ibid.*, p. 46.

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.¹¹⁷ 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.¹¹⁸

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.¹¹⁹ The notice presented a two-step economic model that the SBA had developed to estimate the impact directly attributable to the HUBZone program, the SBA's non-HUBZone programs, and other related federal procurement programs on HUBZone areas. 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."¹²⁰

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.¹²¹ 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."¹²²

¹¹⁷ U.S. Government Accountability Office, *Small Business Administration: Status of Efforts to Address Previous Recommendations on the HUBZone Program*, GAO-09-532T, March 25, 2009, p. 8, <http://www.gao.gov/new.items/d09532t.pdf>.

¹¹⁸ Henry Beale and Nicola Deas, "The HUBZone Program Report," Washington, DC: Microeconomic Applications, Inc., prepared for the U.S. Small Business Administration, Office of Advocacy, May 2008, pp. i-iii, <http://www.sba.gov/advo/research/rs325tot.pdf>.

¹¹⁹ U.S. Small Business Administration, "Notice of methodology for measuring the economic impact of the HUBZone Program," 73 *Federal Register* 46698-46703, August 11, 2008.

¹²⁰ *Ibid.*, p. 46701.

¹²¹ U.S. Government Accountability Office, *Small Business Administration: Status of Efforts to Address Previous Recommendations on the HUBZone Program*, GAO-09-532T, March 25, 2009, p. 9, <http://www.gao.gov/new.items/d09532t.pdf>.

¹²² *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” in order to “provide for the continuous study and monitoring of the program’s effectiveness in terms of its economic goals.”¹²³ However, it did not provide any details concerning the methodology and used 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.¹²⁴

Legislation

S. 3020, the HUBZone Improvement Act of 2010, would require the SBA to implement GAO’s recommendation to “develop measures and implement plans to assess the effectiveness of the HUBZone program.”¹²⁵ It would require 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.”¹²⁶

The SBA has not formally responded to the legislation. It has argued at congressional hearings and in its FY2011 congressional budget justification report that it is taking steps to implement GAO’s recommendation.¹²⁷

One possible option available to Congress to further evaluate the HUBZone program’s impact on small businesses and economically distressed communities is to require the SBA to commission a multi-year time series study of the HUBZone program’s impact on small businesses and economically distressed communities similar to the multi-year time series study currently underway for the SBA’s education and training programs.¹²⁸ That ongoing study, started in 2003, includes an annual survey of small business owners who have received SBA education and training services. The study’s latest report, released in September 2009, “measures attitudinal assessments, perceptions of changes in management/marketing practices, and business growth for firms that utilized the SBA’s Office of Entrepreneurial Development Resources [Small Business Development Centers, SCORE, and Women Business Centers] during the fourth quarter of 2006, 2007 or 2008.”¹²⁹

¹²³ U.S. Small Business Administration, *Fiscal Year 2011 Congressional Budget Justification and FY2009 Annual Performance Report*, Washington, DC, p. 73, http://www.sba.gov/idc/groups/public/documents/sba_homepage/fy_2011_cbj_09_apr.pdf.

¹²⁴ *Ibid.*

¹²⁵ S. 3020, the HUBZone Improvement Act of 2010.

¹²⁶ *Ibid.*

¹²⁷ 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; and U.S. Small Business Administration, *Fiscal Year 2011 Congressional Budget Justification and FY2009 Annual Performance Report*, Washington, DC, pp. 72, 73, http://www.sba.gov/idc/groups/public/documents/sba_homepage/fy_2011_cbj_09_apr.pdf.

¹²⁸ U.S. Small Business Administration, Office of Entrepreneurial Development, “Impact Study of Entrepreneurial Development Resources,” September 10, 2009, http://www.sba.gov/idc/groups/public/documents/sba_program_office/ed_finalreport_2009.pdf.

¹²⁹ *Ibid.*, p. 2.

The 2010 Decennial Census

As mentioned previously, P.L. 108-447, the Consolidated Appropriations Act, 2005, effectively extended the eligibility of redesignated HUBZone areas by allowing them to retain eligibility for three years or until the public release of data from the 2010 decennial census, whichever is later. At that time, based on past practice, it was anticipated that the Census Bureau would take at least a year, and probably longer, to release the economic data contained in the 2010 decennial census that would be used in the determination of HUBZone area status.¹³⁰ In the past, such data were derived from the decennial census long form. However, the census long form has been replaced by the American Community Survey (ACS), an ongoing mailed survey of about 250,000 households per month that gathers largely the same data as the long-form. The ACS collects and produces population and housing information at one-year, three-year, and five-year intervals, instead of every 10 years.¹³¹ Specifically, the ACS

provides annual data for areas with populations of at least 65,000 persons, including the total United States, all states and the District of Columbia, all congressional districts, about 800 counties, and 500 metropolitan and micropolitan statistical areas. For less populous areas, the Bureau is producing multi-year averages based on ACS data collected over several years. In 2008, the Bureau released the first three-year averages for areas with 20,000 or more persons, and by 2010, five-year averages will be available for areas with fewer than 20,000 persons.¹³²

The ACS is expected to release data that will be available for use in the determination of HUBZone QCT eligibility status in late 2010. As a result, it is possible that some redesignated HUBZone areas may lose their eligibility status sooner than previously expected. Also, other areas currently not HUBZone eligible may gain eligibility sooner than previously expected.

Because this is the first time that ACS data will be used in the determination of HUBZone area status it is possible that questions might be raised concerning the reliability of the survey data. However, the census long form was also a survey, with a 17% sample size in 2000.

It is also possible that questions might be raised concerning the impact of having economic data at the census tract level that was formerly available once every 10 years now being available once every five years. For example, Congress will now have the option, should it decide to exercise it, to require ACS economic data to be used to re-determine QCT eligibility once every five years instead of waiting for the release of the next decennial census data. It could be argued that using ACS data every five years may increase the HUBZone program's effectiveness in targeting assistance to areas most in need. The counter-argument is that increasing the frequency of QCT determinations could limit the ability of at least some certified HUBZone businesses to benefit from the program.

¹³⁰ Henry Beale and Nicola Deas, "The HUBZone Program Report," Washington D.C., for the U.S. Small Business Administration, May 2008, p. 159, <http://www.sba.gov/advo/research/rs325tot.pdf>.

¹³¹ U.S. Bureau of the Census, "About the ACS: What Is the Survey?" Washington, DC, <http://www.census.gov/acs/www/SBasics/What/What1.htm>. For further analysis see CRS Report R40551, *The 2010 Decennial Census: Background and Issues*, by Jennifer D. Williams.

¹³² CRS Report R40551, *The 2010 Decennial Census: Background and Issues*, by Jennifer D. Williams.

Legislation

S. 3020, the HUBZone Improvement Act of 2010, would effectively prolong the eligibility of at least some redesignated HUBZones. It would amend the Small Business Act to allow redesignated HUBZone areas to retain their HUBZone eligibility for three years or until three years after the first date on which the Administrator publishes a HUBZone map that is based on the results from the 2010 decennial census, whichever is later. Current law allows HUBZone redesignated areas to retain eligibility for three years or until the public release of data from the 2010 decennial census, whichever is later. As mentioned previously, about one-third of QCTs in 2000 (3,364 of 9,964) lost their HUBZone eligibility following the release of the 2000 decennial census data and almost as many census tracts (3,313) gained HUBZone eligibility.¹³³

Concluding Observations

Congressional interest in the SBA's HUBZone program has increased in recent years to levels not seen since the initial debate over whether the program should be authorized. Debates over the program's effect on economically distressed communities, as reflected in GAO's recommendation for new SBA performance measures; concerns, which were addressed by P.L. 111-240, the Small Business Jobs Act of 2010, over the potential impact of the U.S. Court of Federal Claims ruling in *Mission Critical Solutions v. United States* providing the HUBZone program preference in federal contracting when two or more federal contract set-aside programs could be used; and the potential impact of the 2010 decennial census on which areas qualify as a HUBZone 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. Responding to GAO's reports of HUBZone fraud, Representative Nydia M. Velázquez, chair of the House Committee on Small Business, declared on March 25, 2009, that it was time for the "SBA to make a decision, either overhaul the program or scrap it completely."¹³⁴

The SBA has attempted to overhaul the program. It reported in its FY2011 congressional budget justification that it has "met its primary goal during FY2009" to reengineer its "business processes to reduce fraud and abuse with the program."¹³⁵ On April 21, 2010, 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."¹³⁶ She testified that "At the front-end, it means more upfront certification and eligibility. For small businesses already in the program, it means more

¹³³ Henry Beale and Nicola Deas, "The HUBZone Program Report," Washington, DC: Microeconomic Applications, Inc., prepared for the U.S. Small Business Administration, Office of Advocacy, May 2008, p. 136, <http://www.sba.gov/advo/research/rs325tot.pdf>.

¹³⁴ 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. 2.

¹³⁵ U.S. Small Business Administration, *Fiscal Year 2011 Congressional Budget Justification and FY 2009 Annual Performance Report* (Washington: GPO, 2010), p. 72.

¹³⁶ Testimony of Karen G. Mills, SBA Administrator, before the U.S. House of Representatives Committee on Small Business, "Accountability Update," Washington, DC, April 21, 2010, <http://www.house.gov/smbiz/democrats/hearings/hearing-04-21-10-oversight/Mills.pdf>.

efforts with compliance and site visits. And if they're found to be out of compliance, it means pursuing and removing bad actors."¹³⁷

One of the immediate by-products of the SBA's new business processes was an increase in the processing time for new HUBZone certifications. Until recently, 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 takes 5 to 12 months to make those certifications. 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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¹³⁷ Ibid.