

In February 2020, SBA published an FAQs document related to two rules published in 2019. Since then, the Office of the HUBZone Program has received questions and information that has prompted refinement, clarification, or repeating of certain guidance, contained here.

## General Questions

### **1. Why did the U.S. Small Business Administration (SBA) amend the regulations governing the HUBZone program?**

In 2019, SBA published a final rule amending the HUBZone regulations to make it easier for small businesses to utilize the HUBZone program. Changes to the HUBZone program will make it more attractive to small businesses to invest in HUBZones and hire HUBZone residents, providing greater impact to communities, and making it easier for federal agencies to meet their goals to award 3 percent of contracts to certified HUBZone small businesses.

### **2. When did the rule changes take effect?**

The final rule was published on November 26, 2019 (84 FR 65222) and was effective December 26, 2019.

## HUBZone Map

### **1. Will the current HUBZone map freeze be extended?**

SBA was made aware that the 2020 Census data required to update the HUBZone map would not be available in time to update the map on January 1, 2022, as contemplated by the current HUBZone regulations. Consequently, SBA has published a notice in the Federal Register that the HUBZone map will be updated **July 1, 2023**.

### **2. Does the HUBZone map freeze apply to all HUBZone designations (such as Qualified Disaster Areas and Qualified Base Closure Areas)?**

The HUBZone map freeze only applies to Qualified Census Tracts, Qualified Non-Metropolitan Counties, and Redesignated Areas. During the freeze, no Qualified Census Tracts, Qualified Non-Metropolitan Counties, or Redesignated Areas will lose their HUBZone designation, and no new Qualified Census Tracts, Qualified Non-Metropolitan Counties, or Redesignated Areas are being added to the HUBZone map. However, Qualified Disaster Areas, Qualified Base Closure Areas, Indian Reservations, and Governor's Designated Areas have continued to be added to the HUBZone map as appropriate. Additionally, due to the delay in the 2020 Census data, the expiration of all Qualified Base Closure Areas that were scheduled to expire on December 31, 2021, was extended to June 30, 2023.

## Principal Office Requirement

### 1. What is the “long-term investment provision”?

A new provision in the final rule, which is referred to as the “long-term investment provision,” incentivizes firms to make long-term investments in qualifying HUBZones by allowing them to maintain their principal office for up to 10 years and continue to be considered to meet the principal office requirement even if the area loses its HUBZone designation.

Under this new provision, a firm that has made a long-term investment (i.e., purchased a building or entered a lease of at least 10 years) in a principal office in a Qualified Census Tract, Qualified Non-Metropolitan County, Indian Reservation, Qualified Base Closure Area, or Governor’s Designated Area at the time of its initial certification or certification anniversary date occurring after December 26, 2019, will be deemed to have its principal office located in a HUBZone for up to 10 years from the date of that certification or certification anniversary date, as long as the firm maintains the long-term lease or continues to own the property, and as long as that location continues to be the firm’s principal office. See 13 CFR § 126.200(c)(1).

SBA is providing the following policy clarifications regarding this provision:

- This provision may be applied to allow a firm to maintain its HUBZone status for a period of up to 10 years. The 10-year clock starts on the firm’s HUBZone certification date (if the investment was made prior to the firm’s certification) or on the firm’s certification anniversary date that follows the execution of the lease or deed (if the investment was made after the firm’s certification). For example, if a firm was certified on May 1, 2020, and purchased a building on December 1, 2020, the 10-year clock would start when the firm recertifies as of May 1, 2021.
- A firm is only eligible for this provision if the firm purchased a building or signed a long-term lease after December 26, 2019 (the effective date of the final rule implementing this provision).
- A firm is only eligible for this provision if its principal office is located in a Qualified Census Tract, Qualified Non-Metropolitan County, Qualified Base Closure Area, Indian Reservation, or Governor’s Designated Area at the time of the firm’s certification (if the investment was made prior to the firm’s certification) or at the time of the investment (if the investment was made after the firm’s certification).
- A firm is not eligible for this provision if its principal office is located in a Redesignated Area or Qualified Disaster Area at the time of the firm’s certification (if the investment was made

prior to the firm's certification) or at the time of the investment (if the investment was made after the firm's certification). However, if a firm's principal office is in a location that is designated as both a qualifying area (e.g., Qualified Census Tract) and a non-qualifying area (e.g., Redesignated Area) at the time of the firm's certification (if the investment was made prior to the firm's certification) or the time of the investment (if the investment was made after the firm's certification), the firm would be eligible for this provision.

- A firm is not eligible for this provision if its principal office is shared with one or more other businesses.
- A firm is not eligible for this provision if its principal office is a home office (e.g., a location that also serves as a residence).

## **2. How does a firm invoke the long-term investment provision?**

At the time of a firm's annual recertification, the firm must indicate whether its principal office is no longer in a qualifying HUBZone as of its certification anniversary date, but it meets the requirements of the long-term investment provision and is able to provide supporting documentation to demonstrate its compliance with the long-term investment provision.

## **3. What supporting documentation will SBA require from a firm invoking the long-term investment provision?**

To demonstrate eligibility for the long-term investment provision, a firm must submit the following supporting documentation (at a minimum):

- A copy of the deed or lease for the principal office, showing that the investment was made (i.e., the lease/deed was executed) after December 26, 2019 (the effective date of the final rule implementing this provision).
- A copy of the HUBZone map determination for the principal office location, showing that at the time of the firm's certification (if the investment was made prior to the firm's certification) or at the time of the investment (if the investment was made after the firm's certification), the firm's principal office was in a Qualified Census Tract, Qualified Non-Metropolitan County, Qualified Base Closure Area, Indian Reservation, or Governor's Designated Area.

## **4. Why are firms with principal offices in Redesignated Areas and Qualified Disaster Areas unable to qualify for the long-term investment provision?**

The long-term investment provision was intended to incentivize firms to make long-term investments in qualifying HUBZones. Redesignated Areas were excluded from this provision

in our initial guidance because Redesignated Areas are areas that have lost their status as Qualified Census Tracts or Qualified Non-Metropolitan Counties and have been given a three-year “transition period” in which to relocate to a new HUBZone if they wish to continue participating in the HUBZone program. However, nearly all Redesignated Areas across the U.S. were designated as Qualified Disaster Areas following the COVID-19 pandemic disaster declarations issued in March and April 2020. Given that nearly all Redesignated Areas became Qualified Disaster Areas, and all of these Qualified Disaster Areas have now been extended through June 30, 2023, due to the extension of the map freeze, SBA ultimately determined that unless Qualified Disaster Areas also were excluded from this provision, the original exclusion for Redesignated Areas would be rendered meaningless. See the clarifications above under: “What is the ‘long-term investment provision’?”

## **5. How will SBA treat firms with offices in shared working spaces?**

In order for a shared working space to meet the definition of a “principal office” for purposes of HUBZone certification and annual recertification, SBA will require the following:

- A signed lease that meets the following requirements:
  - a. The lease must include start and end dates. For initial applications, the start date must be at least 30 days prior to the date of application submission and the end date must be at least 90 days after the date of application submission. If a firm is on a month-to-month lease, a firm must be able to prove their lease is still active at the time of certification. For annual recertification, the start date must be at least 30 days prior to the firm’s certification anniversary date and the end date must be at least 30 days after the firm’s certification anniversary date.
  - b. The lease must indicate that the firm has dedicated space within the shared facility. Office space will be considered “dedicated space” if it is not shared with other firms; only accessible to the firm; only accessible through a lockable door; and available to the firm without limitations during regular business hours. If the lease does not indicate that the firm has dedicated space, the firm must obtain a statement from the property manager (or other authorized representative of the lessor of the shared working space) that confirms that the dedicated space leased by the firm is not shared with other firms; is only accessible to the firm; is only accessible through a lockable door; and is available to the firm without limitations during regular business hours. Shared office spaces that do not have dedicated space will not be considered to meet the principal office requirement.

- The lease must indicate that the dedicated space contains sufficient work surface area, as well as furniture and equipment (e.g., desks and chairs) to accommodate the number of employees claimed to work from this location. If the lease does not clearly indicate this, provide photos to demonstrate that the dedicated space contains sufficient work surface area, as well as furniture and equipment (e.g., desks and chairs) to accommodate the number of employees claimed to work from this location. Shared office spaces that do not have sufficient work surface area will not be considered to meet the principal office requirement.
- For leases that include utilities, the firm must also provide proof of rental payment in the form of canceled checks (front and back), bank statements, and/or proof of credit card transactions covering the relevant time period.
- Firms may be asked to provide photos and/or a live virtual walk-through of their dedicated space and of the entire shared working space.

## 35 Percent HUBZone Employee Residency Requirement

### 1. What is the new HUBZone “legacy employee” provision?

The final rule published on November 26, 2019, included a provision related to the 35 percent HUBZone residency requirement that is intended to provide flexibility to HUBZone firms and to avoid penalizing successful HUBZone firms with employees who, as a result of the firm’s success, have increased flexibility in deciding where to live.

The new provision is referred to as the “legacy employee” provision and is found in SBA’s regulations at 13 CFR § 126.200(d)(3). Under this new provision, a “legacy employee” is an employee who no longer resides in a HUBZone but may continue to be counted as a HUBZone resident employee if he/she resided in a HUBZone for at least 180 days prior to the firm’s certification (or certification anniversary date) occurring after December 26, 2019; continued to live in a HUBZone for at least 180 days immediately after certification (or certification anniversary date); and has remained an employee of the firm (i.e., worked at least 40 hours per month) since that time.

SBA is providing the following clarifications to this provision:

- This provision only applies to employees who resided in a Qualified Census Tract, Qualified Non-Metropolitan County, Indian Reservation, Qualified Base Closure Area, or Governor’s Designated Area during the relevant time periods (i.e., 180 days before and 180 days after the firm’s certification or certification anniversary date, whichever is applicable).

- This provision does not apply to employees who resided in a Redesignated Area or Qualified Disaster Area during the relevant time periods. However, if an employee resided in a location that was designated as both a qualifying area (e.g., Qualified Census Tract) and a non-qualifying area (e.g., Redesignated Area), this provision would apply.
- A firm is only eligible for this provision if it has a principal office in a Qualified Census Tract, Qualified Non-Metropolitan County, Qualified Base Closure Area, Indian Reservation, or Governor’s Designated Area.
- A firm is not eligible for this provision if its principal office is located in a Redesignated Area or a Qualified Disaster Area. However, if a firm’s principal office is in a location that is designated as both a qualifying area (e.g., Qualified Census Tract) and a non-qualifying area (e.g., Redesignated Area), this provision would apply.
- The certification or certification anniversary date being used to establish the employee as a “legacy employee” must be after December 26, 2019 (the effective date of the final rule implementing this provision).

## **2. How does a firm invoke the “legacy employee” provision?**

A firm must indicate at the time of its annual recertification if fewer than 35 percent of its employees reside in a HUBZone, but it meets the HUBZone residency requirement with the inclusion of “legacy employees.” Firms that only meet the HUBZone residency requirement due to the inclusion of “legacy employees” must be prepared to provide supporting documentation to demonstrate that those individuals they believe to be “legacy employees” in fact meet the requirements of the provision.

## **3. What supporting documentation will SBA require from a firm claiming to have one or more “legacy employees”?**

The supporting documentation required to demonstrate that an individual meets the definition of a “legacy employee” shall include (at a minimum):

- Residency documents showing that the individual lived in a HUBZone for at least 180 days prior to the firm’s initial HUBZone certification date or certification anniversary date (whichever is applicable);
- Residency documents showing that the individual continued to live in a HUBZone for at least 180 days after the firm’s certification or certification anniversary date (whichever is applicable);

- Payroll records showing that the individual has continued to meet the HUBZone definition of “employee” (including working for at least 40 hours per month for the HUBZone firm) on a continuous and uninterrupted basis since the time the individual was counted as a HUBZone resident.

#### **4. If a HUBZone employee moves out of the HUBZone, when is the company required to notify SBA of this change?**

Starting December 26, 2019, the HUBZone regulations no longer make reference to “material changes” and no longer contain a requirement to notify SBA if fewer than 35 percent of employees reside in HUBZones (aside from the requirement that a firm performing a HUBZone contract notify SBA if it falls below 20 percent). There is no requirement to notify SBA if an employee moves out of a HUBZone.

#### **5. If a company supplied a voter registration card that does not have an issuance date, will that be considered acceptable proof of residence in a HUBZone?**

Where the documentation provided to demonstrate HUBZone residency does not include an issuance date that was at least 180 days prior to the firm’s HUBZone application date (or certification anniversary date), SBA will require a signed statement attesting to the individual’s dates of residency.

#### **6. Is an employee required to live in the same HUBZone for 180 days prior to a firm’s HUBZone application date (or certification anniversary date) to be considered a HUBZone resident?**

An employee is not required to live in the same HUBZone for the 180-day period in order to be considered a HUBZone resident. An employee may move between HUBZones and still be considered a HUBZone resident, as long as the employee lived in a HUBZone continuously for the entire 180-day period.

#### **7. Can a firm pay employees to live in a HUBZone?**

A firm cannot simply pay an individual to live in a HUBZone and have the person count as an employee. The individual must be performing legitimate work for the firm. SBA addressed this issue in the final rule published on November 26, 2019, where SBA discussed how to treat third-party businesses that specialize in providing HUBZone employees. In the final rule, SBA explained that this would be allowable where the arrangement appears legitimate and the HUBZone applicant (or recertifying HUBZone participant) shows that the workers being hired through the third-party business are doing legitimate work. Evidence that the arrangement is



legitimate includes evidence that the company providing the HUBZone employees is a legitimate leasing company that is primarily engaged in the business of leasing employees to other businesses.

**8. Will HUBZone applicants and recertifying HUBZone firms be able to count individuals who are on temporary medical leave (e.g., maternity leave or extended illness) as HUBZone employees?**

Where an employee is on temporary medical leave due to maternity leave or extended illness, SBA may count the individual as an employee of the firm if the firm can demonstrate that the following conditions apply:

- The individual must appear on the payroll for the period of review.
- The individual's time in unpaid status cannot exceed 12 weeks within a 12-month period.
- The firm must provide evidence that the individual was a paid employee prior to the leave and demonstrate when the unpaid leave began.

**9. When does SBA consider an individual obtained from a leasing concern to be an employee for HUBZone program purposes?**

In general, individuals obtained from a leasing concern are considered employees for HUBZone purposes. However, SBA policy precludes counting as employees for HUBZone purposes those workers who are "leased" from a third-party business that is not a legitimate employee leasing concern. A legitimate leasing company is one that is primarily engaged in leasing employees to other businesses. SBA also will not consider such individuals to be employees where the applicant has not shown that the individuals being hired through the third-party business are doing legitimate work for the applicant firm.

**10. Why is SBA requiring job descriptions for all HUBZone employees that are working for the firm less than 30 hours per week?**

The HUBZone regulations define the term "employee" to mean an individual employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours during the four-week period immediately prior to the relevant date of review. However, SBA has continued to encounter concerns that the 40 hours per month standard may not be sufficient to stimulate employment in HUBZone areas. Thus, to help ensure that HUBZone firms are providing meaningful employment opportunities for residents of HUBZone areas, the HUBZone program will now require job descriptions for all HUBZone employees who are working less than 30 hours per week. This requirement applies to HUBZone program applicants and HUBZone firms subject to a program examination.



## **11. What information must be included in a job description?**

In general, to meet this requirement, job descriptions will need to address the job title, the individual's duties and responsibilities, the expected work product, and the general job schedule. If a job description covers more than one employee, provide a list of employees covered under that job description.

## **12. What will happen if I don't provide a job description?**

SBA will interpret the failure to submit a job description as an indication that an employee is not performing meaningful work for the firm and the individual will not be considered an employee for HUBZone program purposes. Applicants that do not meet the 35 percent HUBZone residency requirement due to failure to submit the required documentation will be deemed ineligible to participate in the HUBZone program and their application will either be withdrawn or declined. Certified HUBZone small businesses that are found to not meet the 35 percent HUBZone residency requirement due to failure to submit the required documentation will be deemed ineligible to participate in the HUBZone program and proposed for decertification.

## **Annual Recertification**

### **1. When are firms required to recertify their eligibility?**

All certified HUBZone small businesses must annually recertify that they continue to meet the HUBZone eligibility requirements as of the anniversary of their original HUBZone certification date. This means that if a firm is certified on March 1, 2021, it will have to recertify within 30 days of March 1, 2022, that it continues to meet the HUBZone eligibility requirements as of that date.

### **2. Where can I find additional information on the annual recertification process?**

Please see the [Continuing Eligibility for the HUBZone Program: How Does Annual Recertification Work? \(sba.gov\)](#) fact sheet on the HUBZone website.

## **HUBZone Contracts**

### **1. Is a certified HUBZone firm eligible to compete for HUBZone set-asides while having fewer than 35 percent of its employees residing in HUBZones?**

A certified HUBZone firm is eligible to compete for HUBZone set-aside awards if it is a certified HUBZone small business concern in the Dynamic Small Business Search (DSBS)

database at the time of its offer; met the HUBZone requirements at the time of its most recent certification anniversary date (or at the time of its original HUBZone certification, if it has been in the program for less than a year); and completed its annual recertification, if it has been in the program for longer than a year. After being awarded a HUBZone contract, a certified HUBZone firm must “attempt to maintain” compliance with the 35 percent HUBZone residency requirement during contract performance, which means that at least 20 percent of its employees must be HUBZone residents. If the firm falls below 20 percent HUBZone residency while performing a HUBZone contract, this is considered a failure to “attempt to maintain” compliance with the HUBZone residency requirement, and the firm is required by the HUBZone regulations to notify SBA within 30 days of falling below 20 percent.

## **2. When must an agency verify an offeror’s HUBZone eligibility in SAM/DSBS when awarding a task order that is set aside for a HUBZone small business on a non-HUBZone Multiple Award Contract?**

A contracting officer must verify a company’s HUBZone eligibility in the System for Award Management (SAM.gov) or the Dynamic Small Business Search (DSBS) database prior to awarding a task order that is set aside for HUBZone small business concerns, where the Multiple Award Contract itself was issued in full and open competition (note this does not apply to task orders under Federal Supply Schedule contracts).

If the firm is not a certified HUBZone small business concern at the time of its offer for such an order, the contracting officer will not be able to award the task order to the firm.

## **3. Does the “attempt to maintain” rule apply to HUBZone joint ventures?**

If a certified HUBZone small business concern forms a HUBZone joint venture and the joint venture is awarded a HUBZone set-aside contract, the HUBZone-certified joint venture partner is required to “attempt to maintain” compliance with the 35 percent HUBZone residency requirement during the performance of that contract. If that HUBZone joint venture is performing the HUBZone contract at the time of the certified HUBZone firm’s certification anniversary date, then the certified HUBZone firm must have at least 20 percent HUBZone residency on its certification anniversary date in order to recertify its HUBZone status to SBA.

## **Governor’s Designated Areas**

### **1. What are Governor’s Designated Areas?**

The 2018 National Defense Authorization Act authorized a new type of HUBZone designation, known as Governor’s Designated Areas. This authority provides new opportunities to expand

the HUBZone program into distressed rural communities by allowing state governors to petition SBA once a year to designate certain rural areas as HUBZones.

## **2. What is considered a “covered area”?**

The term “covered area” means a census tract or non-metropolitan county that is located outside of an “urbanized area” as determined by the Census Bureau; with a population of not more than 50,000; and for which the average unemployment rate is at least 120 percent of the average unemployment rate of the United States or of the state in which the covered area is located, whichever is less, based on the most recent data available from the American Community Survey conducted by the Census Bureau. The total number of covered areas included in each petition may not exceed 10 percent of the total number of the covered areas in the state.

## **3. How does a governor submit a petition to SBA, and what happens after a petition is submitted?**

Governors may submit petitions to SBA via email to [HZGovernors@sba.gov](mailto:HZGovernors@sba.gov).

While there is no required format for the petitions, the petitions should include a list of the requested covered areas and address the criteria listed in SBA’s regulations at 13 C.F.R. § 126.104. SBA will review the petitions and issue a written response to the requesting governor’s office informing the office of our decision to grant, partially grant, or deny the petition. When a petition is granted, SBA will update the HUBZone map to reflect the newly designated HUBZone areas. These areas will be identified on the HUBZone map as Governor’s Designated Areas and will be treated as HUBZones for at least one year.

## **HUBZone Certification**

### **1. Have there been any changes to the application and review process?**

In order to meet a statutory requirement to process all complete applications within 60 days, the HUBZone program introduced the following improvements, as described in SBA Procedural Notice 6000-20015 (February 23, 2021):

- Shorter timeframe for validating an application from 10 business days to two business days.
- Shorter timeframe for uploading documents from 10 business days to three business days.
- Shorter timeframe for system to automatically close a case for non-response to five days.

- Requesting submission of employee and principal office information on a pilot eligibility workbook tool available on the website.
- Declining an application for lack of response if a firm does not respond or voluntarily withdraw their application within required timeframe.
- Removing requirement for application signature page to be notarized and mailed to the HUBZone office.
- Removing requirement to input financial information.

In addition, firms are now required to upload documents through a more streamlined process utilizing BOX.

## **2. What additional resources are available to help applicants submit complete applications so that they may be reviewed more quickly?**

The HUBZone program has introduced a new application tip sheet, eligibility workbook tool, and an updated supporting document guide and checklist to help firms be fully prepared with all required documents before initiating the online application.

Application support is also available as follows:

- Visit our website at [www.sba.gov/hubzone](http://www.sba.gov/hubzone).
- Contact our customer support Help Desk at [HUBZone@sba.gov](mailto:HUBZone@sba.gov).
- Join our weekly call. The HUBZone program offers eligibility assistance every Tuesday and Thursday from 2 to 3 p.m. ET: 1-208-391-5817; access code 278449067##.

## **3. Where do I find the statutes and regulations governing the HUBZone program?**

- Statutory Authority: Small Business Act, 15 U.S.C. §§ 632(p), 657a
- HUBZone Program Regulations: 13 CFR Part 126
- Size Regulations: 13 CFR Part 121