

**§ 126.101 Which government departments or agencies are affected directly by the HUBZone program?**

(a) The HUBZone Program applies to all federal departments or agencies that employ one or more contracting officers.

(b) The HUBZone program does not apply to contracts awarded by state and local governments. However, state and local governments may use the List of certified HUBZone small business concerns to identify certified HUBZone small business concerns for similar programs authorized under state or local law.

[63 FR 31908, June 11, 1998, as amended at 66 FR 4645, Jan. 18, 2001; 69 FR 29420, May 24, 2004; 84 FR 65239, Nov. 26, 2019]

**§ 126.102 What is the effect of the HUBZone program on the section 8(d) subcontracting program?**

The HUBZone Act of 1997 amended the section 8(d) subcontracting program to include qualified HUBZone SBCs in the formal subcontracting plans described in § 125.3 of this title.

**§ 126.103 What definitions are important in the HUBZone program?**

*Administrator* means the Administrator of the United States Small Business Administration (SBA).

*AA/BD* means SBA's Associate Administrator for Business Development.

*AA/GC&BD* means Associate Administrator, Office of Government Contracting & Business Development.

*Agricultural commodity* has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

*Alaska Native Corporation (ANC)* has the same meaning as the term "Native Corporation" in section 3 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1602.

*Attempt to maintain* means making substantive and documented efforts, such as written offers of employment, published advertisements seeking employees, and attendance at job fairs and applies only to concerns during the performance of any HUBZone contract. A certified HUBZone small business concern that has less than 20% of its total employees residing in a HUBZone during the performance of a HUBZone

contract has failed to attempt to maintain the HUBZone residency requirement.

*Base closure area* means:

(1) Lands within the external boundaries of a military installation that were closed through a privatization process under the authority of:

(i) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Pub. L. 101–510; 10 U.S.C. 2687 note);

(ii) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–526; 10 U.S.C. 2687 note);

(iii) 10 U.S.C. 2687; or

(iv) Any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use;

(2) The census tract or nonmetropolitan county (excluding any qualified census tract and any qualified nonmetropolitan county) in which the lands described in paragraph (1) of this definition are wholly contained;

(3) A census tract or nonmetropolitan county (excluding any qualified census tract and any qualified nonmetropolitan county) the boundaries of which intersect the area described in paragraph (1) of this definition; and

(4) A census tract or nonmetropolitan county (excluding any qualified census tract and any qualified nonmetropolitan county) the boundaries of which are contiguous to the area described in paragraph (2) or paragraph (3) of this definition.

*Certify* means the process by which SBA determines that a concern is qualified for the HUBZone program and eligible to be designated by SBA as a certified HUBZone small business concern in the Dynamic Small Business Search (DSBS) system (or successor system).

*Citizen* means a person born or naturalized in the United States. SBA does not consider holders of permanent visas and resident aliens to be citizens.

*Community Development Corporation (CDC)* means a corporation that has received financial assistance under Part 1 of Subchapter A of the Community Economic Development Act of 1981, 42 U.S.C. 9805-9808.

*Concern* means a firm which satisfies the requirements in §§121.105(a) and (b) of this title.

*Contract opportunity* means a situation in which a requirement for a procurement exists, none of the exclusions from §126.605 applies, and any applicable conditions in §126.607 are met.

*Contracting Officer (CO)* has the meaning given that term in 41 U.S.C. 423(f)(5), which defines a CO as a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

*County* means the political subdivisions recognized as a county by a state or commonwealth or which is an equivalent political subdivision such as a parish, borough, independent city, or *municipio*, where such subdivisions are not subdivisions within counties.

*DAA/GC&BD* means SBA's Deputy Associate Administrator for Government Contracting and Business Development.

*D/HUB* means the Director of SBA's Office of HUBZone.

*Decertify* means the process by which SBA determines that a concern no longer qualifies as a HUBZone small business concern and removes that concern as a certified HUBZone small business concern from DSBS (or successor system), or the process by which SBA removes a concern as a certified HUBZone small business concern from DSBS (or successor system) after receiving a request to voluntarily withdraw from the HUBZone program.

*Dynamic Small Business Search (DSBS)* means the database that government agencies use to find small business contractors for upcoming contracts. The information a business provides when registering in the System for Award Management (SAM) is used to populate DSBS. For HUBZone Program purposes, a concern's DSBS profile will indicate whether it is a certified

HUBZone small business concern, and if so, the date it was certified or recertified.

*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 during the four-week period immediately prior to the relevant date of review, which is either the date the concern submits its HUBZone application to SBA or the date of recertification. SBA will review a concern's payroll records for the most recently completed pay periods that account for the four-week period immediately prior to the date of application or date of recertification in order to determine which individuals meet this definition. To determine if an individual is an employee, SBA reviews the totality of circumstances, including criteria used by the Internal Revenue Service (IRS) for Federal income tax purposes and the factors set forth in SBA's Size Policy Statement No. 1 (51 FR 6099, February 20, 1986).

(1) In general, the following are considered employees:

(i) Individuals obtained from a temporary employee agency, leasing concern, or through a union agreement, or co-employed pursuant to a professional employer organization agreement;

(ii) An individual who has an ownership interest in the concern and who works for the concern a minimum of 40 hours during the four-week period immediately prior to the relevant date of review, whether or not the individual receives compensation;

(iii) The sole owner of a concern who works less than 40 hours during the four-week period immediately prior to the relevant date of review, but who has not hired another individual to direct the actions of the concern's employees;

(iv) Individuals who receive in-kind compensation commensurate with work performed. Such compensation must provide a demonstrable financial value to the individual and must be compliant with all relevant federal and state laws.

(2) In general, the following are not considered employees:

(i) Individuals who are not owners and receive no compensation (including

no in-kind compensation) for work performed;

(ii) Individuals who receive deferred compensation for work performed;

(iii) Independent contractors that receive payment via IRS Form 1099 and are not considered employees under SBA's Size Policy Statement No. 1; and

(iv) Subcontractors.

(3) Employees of an affiliate may be considered employees, if the totality of the circumstances shows that there is no clear line of fracture between the HUBZone applicant (or certified HUBZone small business concern) and its affiliate(s) (see § 126.204).

*Governor-designated covered area* means an area that the Administrator has designated as a HUBZone by approving a Governor-generated petition as described in § 126.104.

*HUBZone* means a historically underutilized business zone, which is an area located within one or more:

- (1) Qualified census tracts;
- (2) Qualified non-metropolitan counties;
- (3) Lands within the external boundaries of an Indian reservation;
- (4) Redesignated areas;
- (5) Qualified base closure areas;
- (6) Qualified disaster areas; or
- (7) Governor-designated covered areas.

*HUBZone small business concern or certified HUBZone small business concern* means a small business concern that meets the requirements described in § 126.200 and that SBA has certified as eligible for federal contracting assistance under the HUBZone program. A concern that was a certified HUBZone small business concern as of December 12, 2017, and that had its principal office located in a redesignated area set to expire prior to January 1, 2020, shall remain a certified HUBZone small business concern until June 30, 2023, so long as all other HUBZone eligibility requirements are met.

*Indian reservation* (1) Has the same meaning as the term "Indian country" in 18 U.S.C. 1151, except that such term does not include:

(i) Any lands that are located within a State in which a tribe did not exercise governmental jurisdiction as of December 21, 2000, unless that tribe is recognized after that date by either an

Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (25 CFR part 83); and

(ii) Lands taken into trust or acquired by an Indian tribe after December 21, 2000 if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status as of December 21, 2000; and

(2) In the State of Oklahoma, means lands that:

(i) Are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

(ii) Are recognized by the Secretary of the Interior as of December 21, 2000, as eligible for trust land status under 25 CFR part 151.

*Indian Tribal Government* means the governing body of any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Interested party* means any concern that submits an offer for a specific HUBZone set-aside contract (including Multiple Award Contracts) or order, any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone small business concern, any concern that submitted an offer in a full and open competition and its opportunity for award will be affected by a reserve of an award given to a qualified HUBZone small business concern, the contracting activity's contracting officer, or SBA.

*Lands within the external boundaries of an Indian reservation* include all lands within the perimeter of an Indian reservation, whether tribally owned and governed or not. For example, land that is individually owned and located within the perimeter of an Indian reservation is "lands within the external boundaries of an Indian reservation." By contrast, an Indian-owned parcel of land that is located outside the perimeter of an Indian reservation is not

“lands within the external boundaries of an Indian reservation.”

*Native Hawaiian Organization (NHO)* means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

*Non-metropolitan* has the meaning used by the Bureau of the Census, United States Department of Commerce, in its publication titled, “1990 Census of Population, Social and Economic Characteristics,” Report Number CP-2, page A-9. This publication is available for inspection at any local Federal Depository Library. For the location of a Federal Depository Library, call toll-free (888) 293-6498 or contact the Bureau of the Census, Population Distribution Branch, Population Division, Washington D.C. 20233-8800.

*Person* means a natural person.

*Primary industry classification or primary industry* means the six-digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the HUBZone applicant or certified HUBZone small business concern. SBA utilizes § 121.107 of this chapter in determining a concern’s primary industry classification.

*Principal office* means the location where the greatest number of the concern’s employees at any one location perform their work.

(1) If an employee works at multiple locations, then the employee will be deemed to work at the location where the employee spends more than 50% of his or her time. If an employee does not spend more than 50% of his or her time at any one location and at least one of those locations is a non-HUBZone location, then the employee will be deemed to work at a non-HUBZone location.

(2) In order for a location to be considered the principal office, the concern must conduct business at this location.

(3) For those concerns whose “primary industry classification” is services or construction (see § 121.201 of this chapter), the determination of prin-

cipal office excludes the concern’s employees who perform more than 50% of their work at job-site locations to fulfill specific contract obligations. If all of a concern’s employees perform more than 50% of their work at job sites, the concern does not comply with the principal office requirement.

(i) *Example 1:* A business concern whose primary industry is construction has a total of 78 employees, including the owners. The business concern has one office (Office A), which is located in a HUBZone, with 3 employees working at that location. The business concern also has a job-site for a current contract, where 75 employees perform more than 50% of their work. The 75 job-site employees are excluded for purposes of determining principal office. Since the remaining 3 employees all work at Office A, Office A is the concern’s principal office. Since Office A is in a HUBZone, the business concern complies with the principal office requirement.

(ii) *Example 2:* A business concern whose primary industry is services has a total of 4 employees, including the owner. The business concern has one office located in a HUBZone (Office A), where 2 employees perform more than 50% of their work, and a second office not located in a HUBZone (Office B), where 2 employees perform more than 50% of their work. Since there is not one location where the greatest number of the concern’s employees at any one location perform their work, the business concern would not have a principal office in a HUBZone.

(iii) *Example 3:* A business concern whose primary industry is services has a total of 6 employees, including the owner. Five of the employees perform all of their work at job-sites fulfilling specific contract obligations. The business concern’s owner performs 45% of her work at job-sites, and 55% of her work at an office located in a HUBZone (Office A) conducting tasks such as writing proposals, generating payroll, and responding to emails. Office A would be considered the principal office of the concern since it is the only location where any employees of the concern work that is not a job site and the 1 individual working there spends more than 50% of her time at Office A. Since

Office A is located in a HUBZone, the small business concern would meet the principal office requirement.

*Qualified base closure area* means a base closure area that is treated by SBA as a HUBZone for a period of at least 8 years, beginning on the date on which the Administrator designates the base closure area as a HUBZone and ending on the date on which the base closure area ceases to be a qualified census tract or a qualified non-metropolitan county in accordance with the online tool prepared by the Administrator.

*Qualified census tract.* (1) Qualified census tract means a census tract which is designated by the Secretary of Housing and Urban Development, and for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. *See* 26 U.S.C. 42(d)(5)(B)(ii)(I).

(2) The portion of a metropolitan statistical area (as defined by the Bureau of the Census, United States Department of Commerce, in its publications on the Census of Population, Social and Economic Characteristics) which may be designated as “qualified census tracts” shall not exceed an area having 20 percent of the population of such metropolitan statistical area. *See* 26 U.S.C. 42(d)(5)(B)(ii)(II). This paragraph does not apply to any metropolitan statistical area in the Commonwealth of Puerto Rico until December 22, 2027, or the date on which the Financial Oversight and Management Board for the Commonwealth of Puerto Rico created by the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) (Pub. L. 114–187, June 30, 2016) ceases to exist, whichever event occurs first.

(3) Qualified census tracts are reflected in a publicly accessible online tool that depicts HUBZones and will be updated every 5 years.

*Qualified disaster area.* (1) Qualified disaster area means any census tract or nonmetropolitan county located in an area where a major disaster declared by the President under section

401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) has occurred or an area in which a catastrophic incident has occurred if such census tract or non-metropolitan county ceased to be a qualified census tract or qualified non-metropolitan county during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred.

(2) A census tract or nonmetropolitan county shall be considered to be a qualified disaster area only for the period of time ending on the date the area ceases to be a qualified census tract or a qualified nonmetropolitan county, in accordance with the publicly accessible online tool that depicts HUBZones, and beginning—

(i) In the case of a major disaster, on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county, as applicable, is located; or

(ii) In the case of a catastrophic incident, on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan county, as applicable, is located.

*Qualified non-metropolitan county* means any county that was not located in a metropolitan statistical area (as defined by the Bureau of the Census, United States Department of Commerce, in its publications on the Census of Population, Social and Economic Characteristics) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 26 U.S.C. 42(d)(5)(B)(ii), and in which:

(1) The median household income is less than 80% of the State median household income, based on a 5-year average of the available data from the Bureau of the Census of the Department of Commerce;

(2) 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 a 5-year average of the data available from

the Local Area Unemployment Statistics report, produced by the Department of Labor's Bureau of Labor Statistics; or

(3) There is located a Difficult Development Area within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States. A Difficult Development Area (DDA) is an area designated by the Secretary of the Department of Housing and Urban Development, in accordance with section 26 U.S.C. 42(d)(5)(B)(iii), with high construction, land, and utility costs relative to its area median gross income.

(4) Qualified non-metropolitan counties are reflected in a publicly accessible online tool that depicts HUBZones and will be updated every 5 years.

*Redesignated area* means any census tract that ceases to be a "qualified census tract" or any non-metropolitan county that ceases to be a "qualified non-metropolitan county." A redesignated area generally shall be treated as a HUBZone for a period of three years, starting from the date on which the area ceased to be a qualified census tract or a qualified non-metropolitan county. The date on which the census tract or non-metropolitan county ceases to be qualified is the date on which the official government data affecting the eligibility of the HUBZone is released to the public. However, an area that was a redesignated area on or after December 12, 2017 shall remain a redesignated area until June 30, 2023.

*Reside* means to live at a location full-time and for at least 180 days immediately prior to the date of application (or date of recertification where the individual is being treated as a HUBZone resident for the first time).

(1) To determine residence, SBA will first look to an individual's address identified on his or her driver's license or voter's registration card. Where such documentation is not available, SBA will require other specific proof of residency, such as deeds, leases, or utility bills. Where the documentation pro-

vided does not demonstrate 180 days of residency, SBA will require a signed statement attesting to an individual's dates of residency.

(2) For HUBZone purposes, SBA will consider individuals temporarily residing overseas in connection with the performance of a contract to reside at their U.S. residence.

(i) *Example 1:* A person possesses the deed to a residential property and pays utilities and property taxes for that property. However, the person does not live at this property, but instead rents out this property to another individual. For HUBZone purposes, the person does not reside at the address listed on the deed.

(ii) *Example 2:* A person moves into an apartment under a month-to-month lease and lives in that apartment full-time. SBA would consider the person to reside at the address listed on the lease if the person can show that he or she has lived at that address for at least 180 days immediately prior to the date of application or date of recertification.

(iii) *Example 3:* A person is working overseas on a contract for the small business and is therefore temporarily living abroad. The employee can provide documents showing he is paying rent for an apartment located in a HUBZone. That person is deemed to reside in a HUBZone.

*Small agricultural cooperative* means an association (corporate or otherwise), comprised exclusively of other small agricultural cooperatives, small business concerns, or U.S. citizens, pursuant to the provisions of the Agricultural Marketing Act, 12 U.S.C. 1141j, whose size does not exceed the applicable size standard pursuant to part 121 of this chapter. In determining such size, an agricultural cooperative is treated as a "business concern" and its member shareholders are not considered affiliated with the cooperative by virtue of their membership in the cooperative.

*Small business concern (SBC)* means a concern that, with its affiliates, meets

## § 126.104

## 13 CFR Ch. I (1–1–23 Edition)

the size standard for its primary industry, pursuant to part 121 of this chapter.

[63 FR 31908, June 11, 1998, as amended at 66 FR 4645, Jan. 18, 2001; 69 FR 29421, May 24, 2004; 70 FR 51248, Aug. 30, 2005; 72 FR 50041, Aug. 30, 2007; 74 FR 45754, Sept. 4, 2009; 74 FR 56702, Nov. 3, 2009; 78 FR 61144, Oct. 2, 2013; 81 FR 51313, Aug. 4, 2016; 82 FR 48904, Oct. 23, 2017; 84 FR 62449, Nov. 15, 2019; 84 FR 65239, Nov. 26, 2019; 86 FR 23864, May 5, 2021]

### § 126.104 How can a Governor petition for the designation of a Governor-designated covered area?

(a) For a specific covered area to receive a designation as a Governor-designated covered area, the Governor of the State in which the identified covered area is wholly contained shall include such area in a petition to the Administrator requesting such a designation. In reviewing a request for designation included in such a petition, the Administrator may consider—

(1) The potential for job creation and investment in the covered area;

(2) The demonstrated interest of small business concerns in the covered area to be designated as a Governor-designated covered area;

(3) How State and local government officials have incorporated the covered area into an economic development strategy; and

(4) If the covered area was a HUBZone before becoming the subject of the petition, the impact on the covered area if the Administrator did not approve the petition.

(b) Each calendar year, a Governor may submit not more than 1 petition described in this section. Such petition shall include all covered areas in a State for which the Governor seeks designation as a Governor-designated covered area, except that the total number of covered areas included in such petition may not exceed 10 percent of the total number of covered areas in the State.

(c) If the Administrator grants a petition described in this section, the Governor of the Governor-designated covered area shall, not less frequently than annually, submit data to the Administrator certifying that each Governor-designated covered area continues to meet the requirements of paragraph (d)(1) of this section.

(d) In this section:

(1) The term “covered area” means an area in a State—

(i) That is located outside of an urbanized area, as determined by the Bureau of the Census;

(ii) With a population of not more than 50,000; and

(iii) For which the average unemployment rate is not less than 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 Bureau of the Census.

(2) The term “Governor” means the chief executive of a State.

(3) The term “State” means each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

[84 FR 62449, Nov. 15, 2019]

### Subpart B—Requirements To Be a Certified HUBZone Small Business Concern

#### § 126.200 What requirements must a concern meet to be eligible as a certified HUBZone small business concern?

(a) *Ownership.* In order to be eligible for HUBZone certification and to remain certified, a small business concern must be owned in accordance with this paragraph. The concern must be:

(1) At least 51% owned and controlled by one or more individuals who are United States citizens;

(2) An ANC or at least 51% owned by an ANC or a wholly-owned business entity of an ANC;

(3) At least 51% owned by one or more Indian Tribal Governments, or by a corporation that is wholly owned by one or more Indian Tribal Governments;

(4) At least 51% owned by one or more CDCs;

(5) A small agricultural cooperative organized or incorporated in the United States, or at least 51% owned by one or more small agricultural cooperatives