

(Disposal of consumer information), 334.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 334.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)

3. 12 CFR 365.101–.105 & Appendix A to Subpart B—Registration of Residential Mortgage Loan Originators

*C. Office of the Comptroller of the Currency*

1. 12 CFR 34.20–.25—Adjustable-Rate Mortgages (but only as applied to non-federally chartered housing creditors under the Alternative Mortgage Transaction Parity Act (“AMTPA”))
2. 12 CFR 34.101–.105 & Appendix A to Subpart F—Registration of Residential Mortgage Loan Originators
3. 12 CFR part 40—Privacy of Consumer Financial Information
4. 12 CFR part 41—Fair Credit Reporting, except with respect to §§ 41.83 (Disposal of consumer information), 41.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 41.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)

*D. Office of Thrift Supervision*

1. 12 CFR 560.35—Adjustments to home loans (but only as applied to non-federally chartered housing creditors under AMTPA)
2. 12 CFR 560.210–220—Alternative Mortgage Transactions (but only as it relates to AMTPA)
3. 12 CFR 563.101–.105 & Appendix A to Subpart D—Registration of Residential Mortgage Loan Originators
4. 12 CFR part 571—Fair Credit Reporting, except with respect to §§ 571.83 (Disposal of consumer information), 571.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 571.91 (Duties of card issuers regarding change of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)
5. 12 CFR part 573—Privacy of Consumer Financial Information

*E. National Credit Union Administration*

1. 12 CFR 701.21—Loans to members and lines of credit to members (but only as applied to non-federally chartered housing creditors under AMTPA)
2. 12 CFR part 707—Truth in Savings
3. 12 CFR part 716—Privacy of Consumer Financial Information
4. 12 CFR part 717—Fair Credit Reporting, except with respect to §§ 717.83 (Disposal of consumer information), 717.90 (Duties regarding the detection, prevention, and mitigation of identity theft), 717.91 (Duties of card issuers regarding changes of address), & Appendix J (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)
5. 12 CFR part 741—Requirements for Insurance, but only with respect to

§§ 741.217 (Truth in savings), 741.220 (Privacy of consumer financial information), & 741.223 (Registration of residential mortgage loan originators)

6. 12 CFR part 761—Registration of Mortgage Loan Originators

*F. Federal Trade Commission*

1. 16 CFR part 310—Telemarketing Sales Rule
2. 16 CFR part 313—Privacy of Consumer Financial Information
3. 16 CFR part 320—Disclosure Requirements for Depository Institutions Lacking Federal Depository Insurance
4. 16 CFR part 321—Mortgage Acts and Practices—Advertising
5. 16 CFR part 322—Mortgage Assistance Relief Services
6. 16 CFR part 425—Use of Prenotification Negative Option Plans
7. 16 CFR part 429—Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations
8. 16 CFR part 433—Preservation of Consumers’ Claims and Defenses
9. 16 CFR part 444—Credit Practices
10. 16 CFR part 435—Mail or Telephone Order Merchandise
11. 16 CFR part 436—Disclosure Requirements and Prohibitions Concerning Franchising
12. 16 CFR part 437—Disclosure Requirements and Prohibitions Concerning Business Opportunities
13. 16 CFR Subchapter F, Parts 603 *et seq.*—Fair Credit Reporting Act, except with respect to Part 681 (Identity Theft Rules), Part 682 (Disposal of Consumer Report Information and Records), & Appendix A to Part 681 (Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation)
14. 16 CFR part 901—Procedures for State Application for Exemption from the Provisions of the [Fair Debt Collection Practices] Act

*G. Department of Housing and Urban Development*

1. 24 CFR 26.28–.56—Hearing Procedures Pursuant to the Administrative Procedure Act
2. 24 CFR part 30—Civil Money Penalties: Certain Prohibited Conduct (but only as applied to the Real Estate Settlement Procedures Act of 1974 (“RESPA”), the Interstate Land Sales Full Disclosure Act (“ILSA”), and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008)
3. 24 CFR part 1710—Land Registration
4. 24 CFR part 1715—Purchasers’ Revocation Rights, Sales Practices, and Standards
5. 24 CFR part 1720—Formal Procedures and Rules of Practice
6. 24 CFR part 3400—SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities
7. 24 CFR part 3500—Real Estate Settlement Procedures Act
8. 24 CFR part 3800—Investigations in Consumer Regulatory Programs (but only as applied to RESPA and ILSA)

Dated: July 14, 2011.

**Alastair Fitzpayne,**

*Deputy Chief of Staff and Executive Secretary, Department of the Treasury.*

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 126

**RIN 3245–AG45**

#### Small Business HUBZone Program; Government Contracting Programs

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule amends the U.S. Small Business Administration’s regulations pertaining to the Historically Underutilized Business Zone (HUBZone Program). Specifically, this interim final rule allows a declined or decertified HUBZone small business to reapply ninety (90) calendar days after the decline or decertification decision is rendered, rather than wait one year to reapply, provided that it meets the eligibility requirements at that time of application.

**DATES:** *Effective Date:* This rule is effective July 21, 2011.

*Comment Date:* Comments must be received on or before August 22, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 3245–AG45 by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov> and follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD-ROM submissions:* Mariana Pardo, Deputy Director, HUBZone Program, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Mariana Pardo, Deputy Director, HUBZone Program, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on <http://www.Regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.Regulations.gov>, please submit the information to Mariana Pardo and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination of whether the information will be published or not.

**FOR FURTHER INFORMATION CONTACT:** Mariana Pardo, Deputy Director, HUBZone Program, (202) 205–2985 or by e-mail at [mariana.pardo@sba.gov](mailto:mariana.pardo@sba.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Small Business Act (Act) and implementing regulations require that, with the exception of certain specified entities, qualified HUBZone small business concerns (SBCs) have a principal office located in a HUBZone. 15 U.S.C. 632(p)(5)(A)(i)(I)(aa); 13 CFR 126.103. The Act and the implementing regulations also require that at least 35% of the HUBZone small business concern's employees reside in a HUBZone. *Id.* 13 CFR 126.200(b). The statute and regulations define a HUBZone to mean an area located within one or more qualified census tracts (QCTs), qualified non-metropolitan counties (QNMCs), lands within the external boundaries of an Indian reservation, redesignated areas, or base closure areas. *Id.* § 632(p)(1); 13 CFR 126.103.

The Act and SBA's regulations define a QCT by referring to the Internal Revenue Code of 1987, which in turn defines a QCT as any census tract which is designated by the Secretary of Housing and Urban Development (HUD) 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. *See* 26 U.S.C. 42(d)(5)(C). Thus, a QCT may be located in a nonmetropolitan or a metropolitan area. In addition, a QCT is not necessarily a "county," but is an area located within a county.

The Act and regulations also define a QNMC as any county that was not located in a metropolitan statistical area and in which: (1) The median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Census Bureau; (2) the unemployment rate is not less than 140 percent 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 Department of Labor (DOL); or (3) there is located a difficult development area, as designated by HUD within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States. 15 U.S.C. 632(p)(4)(B).

In sum, the HUBZone areas are designated by statute and draw upon determinations and information

obtained by other agencies. The SBA takes these designations and depicts them on an easy-to-use HUBZone map, available at <http://www.sba.gov/content/hubzone-maps>. The SBA does not have discretion when it comes to designating HUBZones.

With respect to both QCTs and QNMCs, the SBA relies on data from HUD, Census Bureau and DOL in order to determine which areas are HUBZones. With respect to the census tracts, HUD reviews census tracts as new data from the Census Bureau become available or when metropolitan area definitions change. HUD's current designations of census tracts are based on data from the 2000 Census because in the past, tract-level data was only available from a Decennial Census. However, due to changes in collection of income data at the tract level by the Census Bureau, HUD will now be relying on data from the American Community Survey (ACS). Although the ACS is an annual survey, tract-level data from the ACS will be released as five-year averages. The first release of this data will cover the 2005 through 2009 period and the Census Bureau expects to make this data available sometime soon. HUD will review this new data during 2012 and make census tract determinations. Census tracts will be subsequently reviewed based on new data every 5 years. SBA relies on these HUD designations for purposes of its program.

However, before HUD can designate a census tract, it must rely on the Census Bureau to define the census tract's boundaries. With respect to the census tracts, the Census Bureau defines the boundaries in cooperation with local authorities every ten years and, following a public comment period, has recently completed defining tract boundaries for the 2010 Census. Once census tract boundaries are set, they remain unchanged for the next decade. Thus, tract boundaries will not be changed again until the 2020 Decennial Census.

Therefore, with respect to HUBZone QCTs, SBA relies on designations from HUD and boundary designations from the Census Bureau.

With respect to nonmetropolitan counties, SBA receives unemployment data from DOL yearly. Further, designations based on the HUD defined Difficult Development Areas (DDAs) are updated annually. Thus, for QNMCs, the SBA relies on DOL data and HUD definitions for DDAs.

When the HUBZone Program first started, the receipt of such data or designations, especially the annual data, meant that in some cases certain

HUBZone areas could be affected every year by the release of certain data, *i.e.*, the areas would lose HUBZone status. As a result, the Small Business Act was amended to add a new HUBZone area known as a "redesignated area." At that time, a redesignated area, that is, any QCT or QNMC that ceased to be qualified, would become redesignated as a HUBZone area only for the 3-year period following the date on which the QCT or QNMC ceased to be so qualified. Public Law 106–554, § 613(1)(c) (2000). Congress added these redesignated areas because it believed that decertifying large numbers of small businesses that had not seen any benefit to the program would have threatened the HUBZone program by giving it a reputation as not worthwhile. Congress also believed any county that could change into and out of HUBZone status annually would not attract small businesses to the HUBZone program and would hinder investment in such a location. S. Rep. 107–19, 107th Cong. 1st Sess. (2001).

A few years later, the SBA encountered additional problems once the Census Bureau released the 2000 Decennial Census results as a large number of areas ceased to be considered HUBZones. In response, Congress amended the Act in 2004 to redefine a redesignated area to mean any QCT or QNMC that ceases to be qualified may be a redesignated area until the later of: (1) The date on which the Census Bureau publicly releases the first results from the 2010 Decennial Census that affects the eligibility of the HUBZone; or (2) three years after the date on which the census tract or nonmetropolitan county ceased to be so qualified. 15 U.S.C. 632(p)(4)(C). The purpose of extending the redesignated status until the 2010 Decennial Census or three years after the date the QCT or QNMC ceases to be a qualified HUBZone (whichever is later) was to provide adequate time for HUBZone SBCs to recoup a return on investment and assist the Federal government in meeting its statutory prime contracting HUBZone goal of 3 percent.

This year, the Census Bureau will publicly release the first results of the 2010 Decennial Census that affect the eligibility of the HUBZones. The Census Bureau uses the ACS to collect socioeconomic and housing information continuously from a national sample of housing units and people living in group quarters, and tabulates these data on a calendar year basis. Agencies will utilize the evaluated data from the ACS to make QCT and QNMC determinations. The first set of evaluated data using ACS numbers that affect HUBZone eligibility are expected

to be available to the public in the Fall 2011. SBA will generate a new list of QNMCs at that time that will take into consideration the analysis of the income data coming from the five year ACS. At the moment that the new list is made public, those areas that were redesignated prior to 2008 will expire and cease to be HUBZones. The areas affected include redesignated QCTs and QNMCs (including QNMCs that are difficult development areas).

The following provides examples of how the statutory redesignated areas are affected or not affected by the release of the 2010 Decennial Census:

*Example 1:* A QCT ceased to be a HUBZone in 2004 and therefore became a redesignated HUBZone in 2004. The area may remain a HUBZone until the release of the 2010 Decennial Census data that affects its eligibility or three years from the date of redesignation, whichever is later. In this case, the area will cease to be a HUBZone on the release of the 2010 Decennial Census data that affects its eligibility.

*Example 2:* A QNMC ceased to be a HUBZone in 2009 because the unemployment ratio disqualified it and therefore became a redesignated HUBZone in 2009. The area may remain a HUBZone until the release of the 2010 Decennial Census data that affects its eligibility or three years from the date of redesignation, whichever is later. In this case, the area will cease to be a HUBZone three years from the date of redesignation—2012.

*Example 3:* A QNMC ceased to be a HUBZone in 2008 because HUD determined the area was no longer a difficult development area and therefore it became a redesignated HUBZone in 2008. The area may remain a HUBZone until the release of the 2010 Decennial Census data that affects its eligibility or three years from the date of redesignation, whichever is greater. In this case, the area will cease to be a HUBZone three years from the date of redesignation—2011.

When the Census Bureau releases the data, the SBA will publish information and later update its current maps to show the public those areas that are no longer qualified HUBZones because they are no longer redesignated areas. Any current qualified HUBZone SBC with a principal office in one of those areas will be proposed for decertification. The SBA will also publish information and update its maps to show any areas that may become new HUBZones. In some cases, a redesignated area could remain a HUBZone by becoming a QNMC or QCT. The SBA does not have any information at this time to identify areas that will be designated as new HUBZones.

We note that the HUBZone Program was established in 1997, and all the redesignated areas have been allowed to

stay in the program or reinstated since December 2004. Since then, no SBC has been decertified because of an expired redesignation. In general, SBA believes that many SBCs in these redesignated areas have been given ample time to recoup a return on their investment. However, we understand that many of these SBCs in the redesignated areas that are getting ready to expire may want to continue to utilize the HUBZone Program and could do so by moving their business into a HUBZone.

Specifically, the HUBZone Program has an average of 8,500 participating firms, and about 40% of the firms will be affected by the expiring redesignations based on principal office location. In addition there will be another set of small businesses that will be ineligible because they no longer meet the HUBZone 35% residency requirement. Further, the HUBZone Program receives approximately 4,000 applications per year. Of the 1,089 applications that were declined in FY10, 62% were declined due to the applicant not meeting the 35% employee HUBZone residence requirement and 46% because of not meeting the principal office requirement. Also, of the 742 firms that voluntarily decertified in FY09 and FY10, 23% did so because they were not meeting the 35% employee HUBZone residence requirement and 22% because of not meeting the principal office requirement.

Under the current regulations, once declined or decertified, these small businesses must wait one year to reapply. At the time it promulgated that rule, the SBA believed that a one year wait was sufficient time for a small business to come back into compliance. However, in many cases, the small business only has to hire a few additional HUBZone residents. In other cases, such as those small businesses with principal offices in HUBZone areas that are about to expire, the SBA has provided several years warning about the expiration. In preparation, some businesses may be planning to move to HUBZone areas. It would not serve the purposes of the program to make such small businesses wait one year to reapply.

The SBA believes that reducing the one year wait period to ninety (90) calendar days would encourage the businesses to move into newly designated HUBZones and hire HUBZone residents, which are the two purposes of the statute. It would also create an incentive for small businesses that no longer meet the HUBZone program requirements to voluntarily decertify and then seek eligibility when

they come back into compliance. Because so many small businesses will be affected by the expiration of the redesignated areas—whether as a result of its principal office no longer being located in a HUBZone or employees no longer residing in a HUBZone—the SBA believes it is best to reduce the one year wait period, so that no small business is subject to this lengthy wait.

The SBA does not believe that reducing of the one year wait would increase fraud, waste, and abuse on the program. The business concern must meet all HUBZone eligibility requirements when it reapplies. In fact decreasing the one year wait to ninety (90) calendar days will incentivize small businesses to voluntarily decertify knowing that they do not need to wait a year before reapplying.

As a result of the foregoing, with this interim final rule, the SBA is reducing the one year wait period set forth in 13 CFR 126.309. Accordingly, 13 CFR 126.309 would simply state that a concern that SBA has declined or decertified may seek certification ninety (90) calendar days after the date of decline or decertification if it believes that it has overcome all reasons for decline or decertification through changed circumstances and is currently eligible.

## II. Justification for Publication as an Interim Final Status Rule

In general, SBA publishes a rule for public comment before issuing a final rule in accordance with the Administrative Procedure Act (APA) and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. The APA provides an exception to this standard rulemaking process where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

The purpose of the HUBZone program is job creation and capital investment in Historically Underutilized Business Zones. In the present case, the SBA believes that up to half of the currently certified HUBZone SBCs may be affected by the results of the 2010 Decennial Census, whether as a result of the company's principal office losing HUBZone status or the company's employees no longer residing in a HUBZone. Approximately 47.5% of current QNMCs will be removed from HZ qualification, 30% of the current DDAs will be removed and 27% of

QCTs will be removed. This means that many small businesses will no longer be certified HUBZone small business concerns and would have to wait one year to reapply to the program, even if they moved their business to a HUBZone or hired new HUBZone residents as employees. Decreasing the one year wait would permit, and we believe encourage, the businesses to move into newly designated HUBZones, which is one of the purposes of the statute.

This rule will help the communities that qualify as HUBZones under the criteria established by the Act. In allowing concerns to apply for certification after ninety (90) calendar days from being declined or decertified, such qualified HUBZone communities would boost their capital investment and job opportunities for its residents, since these declined or decertified small businesses will need to either locate to HUBZone communities and/or hire HUBZone residents, giving them an increased prospect of positively impacting jobs and investment in historically underutilized areas.

In addition, we have been notifying small businesses whose principal office is located in a redesignated area that is expiring with the release of 2010 Census data but the SBA cannot easily notify other small businesses who have a principal office in a continuing HUBZone but who have employees who live in expiring areas, and must meet the 35% HZ residency requirement. Reducing the one-year wait will encourage such small businesses to voluntarily decertify from the program because they know they will be able to reapply immediately when they are eligible.

We note that the public will still have the opportunity to offer comments, which will be reviewed by the SBA. Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule as quickly as possible.

### III. Justification for Immediate Effective Date of Interim Final Rule

The APA requires that “publication or service of a substantive rule shall be made not less than 30 days before its effective date, except \* \* \* as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth

above in Section III, “Justification for Publication as Interim Final Status Rule”, SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date. Nonetheless, the public may provide comments to SBA by the deadline for comments. SBA will review any comments received.

### IV. Compliance With Executive Orders 12866, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

#### *Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under E.O. 12866. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

#### *Executive Order 12988*

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

#### *Executive Order 13132*

For the purpose of E.O. 13132, SBA has determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this final rule has no federalism implications warranting preparation of a federalism assessment.

#### *Paperwork Reduction Act*

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

#### *Regulatory Flexibility Act (RFA)*

Because this rule is an interim final rule, there is no requirement for SBA to prepare an Initial Regulatory Flexibility Act analysis. The RFA requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule the agency must prepare analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires such

analysis only where notice and comment rulemaking is required.

### List of Subjects in 13 CFR Part 126

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 126 as follows:

### PART 126—HUBZONE PROGRAM

- 1. The authority citation for part 126 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 632(j), 632(p) and 657a.

- 2. Revise § 126.309 to read as follows:

#### **§ 126.309 May a declined or decertified concern seek certification at a later date?**

A concern that SBA has declined or decertified may seek certification after ninety (90) calendar days from the date of decline or decertification if it believes that it has overcome all reasons for decline or decertification through changed circumstances and is currently eligible. A concern found to be ineligible during a HUBZone status protest is precluded from applying for HUBZone certification for ninety (90) calendar days from the date of the final agency decision (the D/HUB's decision if no appeal is filed or the decision of the AA/GCBD) pursuant to 13 CFR 126.803(d)(5).

- 3. Amend § 126.803 by revising paragraph (d)(5) to read as follows:

#### **§ 126.803 How will SBA process a HUBZone status protest?**

\* \* \* \* \*

(d) \* \* \*

(5) A concern found to be ineligible is precluded from applying for HUBZone certification for ninety (90) calendar days from the date of the final agency decision (the D/HUB's decision if no appeal is filed or the decision of the AA/GCBD).

Dated: July 5, 2011.

**Karen G. Mills,**  
Administrator.

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