

# A REVIEW AND ASSESSMENT OF THE SBA HUBZONE PROGRAM

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## HEARING BEFORE THE SUBCOMMITTEE ON CONTRACTING AND INFRASTRUCTURE OF THE COMMITTEE ON SMALL BUSINESS UNITED STATES HOUSE OF REPRESENTATIVES ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

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## **A REVIEW AND ASSESSMENT OF THE SBA HUBZONE PROGRAM**

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**THURSDAY, JULY 14, 2022**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
SUBCOMMITTEE ON CONTRACTING AND INFRASTRUCTURE,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 10:02 a.m., in Room 2360, Rayburn House Office Building, Hon. Kweisi Mfume [chairman of the Subcommittee] presiding.

Present: Representatives Mfume, Carter, Andy Kim, Stauber, Meuser, Fitzgerald, and Flood.

Chairman MFUME. Good morning, ladies and gentlemen. I want to call this hearing to order. Without objection, the Chair is authorized to declare a recess at any time.

I would like to begin, if I could, by noting a few important requirements.

Standing House and Committee rules will continue to apply during this hybrid proceeding. All Members are reminded that they are expected to adhere to these rules, including the established rules of decorum.

House regulations require Members to be visible through a video connection if they are joining us electronically on this proceeding. And if that is the case, please be mindful to keep your cameras on.

Also, please remember to remain muted until you are recognized in order to minimize any background noise.

In the event a Member encounters technical issues that prevent them from being recognized for their questioning, I will move then to the next available Member of the same party and I will recognize that Member at the next appropriate time slot, provided they have returned to the proceedings.

In 1997, Congress created the Historically Underutilized Business Zone program, also known as the HUBZone program, as part of the Small Business Reauthorization Act. That program was intended to provide small businesses in economically distressed areas with greater access to federal employment and procurement opportunities. This, undoubtedly, was a worthy goal, but it still remains, unfortunately, a goal.

The U.S. Government is the largest purchaser, as most of you know, of goods and services, and it is vital that underserved small businesses have access to this marketplace. When the small firms can compete for and win federal contracts, they in turn create jobs that support our local economies.

Firms that are certified by the SBA as “Qualified HUBZone Small Business Concerns” have access to a range of incentives, including, one, set-asides; two, sole source contracts; three, a 10 percent evaluation preference during full and open competition; and various other incentives.

The Small Business Act also sets a government-wide contracting goal for participation by qualified HUBZone business concerns of not less than 3 percent, both for prime contracts and subcontracts. Unfortunately, this goal has never been met in the 20-plus years of existence.

Let me just deliberately be redundant and repeat that. Unfortunately, this goal has never been met in the program’s 20-plus years of existence.

And so if we want to make progress towards achieving the 3 percent milestone, many of us on this Committee believe that it is vital that we understand the factors that are limiting HUBZone’s reach.

For example, consolidation is a significant inhibitor to small business utilization in contracting. The small business contracting base, remarkably, has shrunk substantially over the years due to initiatives like Category Management. Category Management in many respects has driven a decline in the number of small businesses serving as federal prime contractors, resulting in fewer, not more, contracting opportunities awarded to HUBZone businesses.

Another vexing issue is the limited number of businesses participating in the program. Despite the considerable number of areas that have HUBZone designation, there were only 4,870 participants in the program as of May this year, and that is down more than 8,500 participants since 2011.

In Maryland’s congressional district which I have the pleasure of representing and the honor it is the home of more than 75 HUBZone areas. And there are approximately 288 HUBZone areas in the entire State of Maryland, and yet there are only 355 HUBZone certified firms in that State, which is, on average, less than 2 HUBZone certified firms per HUBZone area.

So today many of us want to hear from our panel about their experience with HUBZone programs like the one that we are talking about—which is, in fact, the only one—and what reforms Congress can, in fact, pursue to increase program utilization. And that is really significant here: What reforms can Congress pursue to increase program utilization?

I mean, it has been 20 years. Do we throw the whole thing out and start over again? Or do we admit that there are some real serious issues that this Committee ought to be looking at to try to find a way to enhance the program and the participation in the program?

I want to examine the efficacy of previous program changes that this Committee and the SBA have instituted. And over the years, it is important to note that this Committee and the SBA have worked to provide stability, certainty, and flexibility when it comes to complying with eligibility requirements.

So as we chart this path forward, it is vital that we examine how these changes are working for program participants. And by improving the HUBZone program to meet its full potential, we believe

that we can empower small businesses to support local economies and uplift socially and economically disadvantaged communities.

So, having said all that, I really want to thank today's witnesses for contributing to this hearing. We all look forward to gaining more insight and understanding from your testimonies about how we can make the HUBZone program more effective in meeting its mission.

And now it is my pleasure to yield to the Ranking Member, the distinguished gentleman from Minnesota, Mr. Stauber, for an opening statement.

Mr. STAUBER. Thank you very much, Mr. Chair.

Before I make my opening statement, Mr. Chair, I would like to take a moment to welcome our newest Member of the Committee on Small Business and the Subcommittee on Contracting and Infrastructure, Representative Mike Flood of Nebraska. Representative Flood was sworn in just this Tuesday and is ready to hit the ground running here with us today.

Welcome to the Committee, Mr. Flood, and we look forward to working with you.

Thank you, Mr. Chairman, and thank you for calling today's hearing. I want to thank all of today's witnesses for joining us this morning to discuss the Small Business Administration's Historically Underutilized Business Zones program, or HUBZone program.

The HUBZone program's core mission is to bring economic hope, independence, jobs, and businesses to economically distressed areas marked by high unemployment and poverty. To accomplish this, the program utilizes a valuable government resource, a government contract.

Through the use of federal contracting preferences, the program works to encourage small businesses to locate an economically distressed area and employ people within that area.

These government contracts to HUBZone small businesses can translate into thousands of job opportunities for individuals in these areas who are either unemployed or underemployed.

Since inception over two decades ago, the program has undergone significant changes. In 2017, this Committee held hearings, assessed the program's successes, and advanced bipartisan reforms to ensure continued forward progress.

Following Congress' passage of these legislative reforms, the Small Business Administration published additional regulatory reforms to the program. All of these reforms were intended to reduce the burden on participating small businesses and encourage the participation of even more small businesses.

Just as we work to assess this program, the Government Accountability Office and the SBA Office of Inspector General have also examined the HUBZone program for over two decades now. In each of the reports from these agencies throughout the years, there are several reoccurring themes.

One of these is regarding technological and communication issues within the program, from publicizing accurate HUBZone area data to streamlining the online certification process to effectively communicating with current HUBZone participants. The HUBZone program has consistently struggled in this area.

Another persistent challenge within the program—and, frankly, one that we have seen throughout the SBA’s programs recently—is the lack of adequate assessments to measure the program’s effectiveness.

While I have no doubt we have success stories from the program with us today, adequate assessment metrics are essential to measuring the overall success of any program and should be especially important for this one.

Finally, there is the issue of potential fraud within the program and the effectiveness of SBA’s fraud mitigation tactics. Watchdog reports have found that deficiencies in internal controls have resulted in a lack of reasonable assurances that firms within the program are actually eligible to participate.

If and when fraud does occur, there are also questions as to whether the SBA is adequately utilizing its suspension and debarment powers, its primary tool for deterring fraudulent actors.

From recent legislation and regulatory changes to persistent challenges within the program, I look forward to hearing from our witnesses about their unique experience with this important program. Given the current inflationary pressures impacting small businesses, hearings like these are paramount.

With that, Mr. Chairman, I once again thank you for calling today’s hearing, and I yield back.

Chairman MFUME. The gentleman yields back.

And with that, I would like to take a moment to explain how this hearing will proceed today.

Each witness will have 5 minutes to provide a statement, and each Committee Member will have 5 minutes for questions.

Please ensure that your microphone is on when you begin speaking and that you return to mute when you are finished.

And with that, I would like to introduce our witnesses.

Our first witness is Mr. Matthew Schoonover.

And, Mr. Schoonover, I hope I am pronouncing your name correctly. With a name like mine, I take great pains to make sure that I don’t mess someone else’s name up. So it is Schoonover?

Mr. SCHOONOVER. Schoonover.

Chairman MFUME. Schoonover, okay.

Mr. Schoonover is Managing Member of the law firm of Schoonover & Moriarty in the State of Kansas. Mr. Schoonover counsels clients on how to achieve success in the federal marketplace. His main focus is regulatory compliance issues and eligibility for the SBA’s small business contracting programs.

In addition, he represents clients on a wide range of litigation-related matters, such as bid protests, SBA’s size and socioeconomic eligibility protests and appeals, and performance disputes within federal agencies.

Mr. Schoonover, we greatly appreciate your expertise and we look forward in just a moment to your testimony.

In fact, why don’t I introduce everyone?

Ms. Bailey is with us by way of—hi there, Ms. Bailey.

I am going to introduce everyone, and then we will just simply proceed after that.

So our next witness is Ms. Shirley Bailey, the CEO and Managing Member of Summit Federal Services, LLC, which is a cer-



tified HUBZone and women-owned small business located in the State of Maryland.

Summit provides a wide range of services to federal contract clients, including acquisition, administrative, and information technology support services.

Ms. Bailey has more than 30 years of management and leadership experience. She is also the President and Board Chair of the HUBZone Contractors National Council.

Welcome, Ms. Bailey.

Our third witness is Ms. Inés Rivas-Hutchins, the founder and president of Intec Group, LLC, a certified HUBZone, 8(a), and economically disadvantaged women-owned small business located in the State of Kentucky.

The Intec Group specializes in all aspects of general construction and has broad experience with military construction projects. Some of those projects include serving clients like the Department of Army, the Air Force, and the Army Corps of Engineers. Ms. Rivas-Hutchins founded Intec in 2015 and has over 15 years of project management experience.

Welcome, Ms. Rivas-Hutchins.

And now I would like to yield to Mr. Stauber, the Ranking Member, to introduce our final witness.

Mr. STAUBER. Thank you, Mr. Chairman.

Our next witness is Mr. Brent Lillard. Mr. Lillard is the co-founder and chief executive officer of GovSmart. GovSmart is an SBA HUBZone certified small business providing full-scale IT solutions to the federal government and its prime contractors.

The company sells mostly IT-related products, including hardware and software for most major manufacturers. Mr. Lillard and his partner started the company in their kitchen in 2009, and have grown it steadily to over a quarter billion dollars in annual revenue with over 70 employees.

Mr. Lillard, thank you once again for testifying before this Subcommittee and for your participation today.

I would also like to thank all of the witnesses for joining us, and I look forward to today's conversation.

Mr. Chairman, I yield back.

Chairman MFUME. The gentleman yields back.

Before we begin, I want to just simply say welcome to the gentleman from Nebraska, Mr. Flood.

I didn't get to you on the floor yesterday. I tried to. But you have got a great family. It was great seeing them. And it was great being a part of the group, the bipartisan welcome to the United States Congress.

It is a real opportunity, as, of course, you know, to do so many things for so many people who want in so many ways real change. I guess that is why we are all called Representatives, because we are really supposed to represent them. So we congratulate you and we welcome you into this body.

Mr. FLOOD. Thank you, sir.

Chairman MFUME. Okay. Mr. Schoonover, you are now recognized for 5 minutes.

**STATEMENTS OF MR. MATTHEW SCHOONOVER, MANAGING MEMBER, SCHOONOVER & MORIARTY LLC, OLATHE, KS; MS. SHIRLEY BAILEY, CHIEF EXECUTIVE OFFICER, SUMMIT FEDERAL SERVICES, LLC, LOCH LYNN HEIGHTS, MD, TESTIFYING ON BEHALF OF THE HUBZONE CONTRACTORS NATIONAL COUNCIL; MS. INÉS RIVAS-HUTCHINS, FOUNDER AND PRESIDENT, INTEC GROUP, LLC, PADUCAH, KY, TESTIFYING ON BEHALF OF WOMEN CONSTRUCTION OWNERS AND EXECUTIVES (WCOE); AND MR. BRENT LILLARD, CHIEF EXECUTIVE OFFICER AND CO-FOUNDER, GOVSMART, INC., CHARLOTTESVILLE, VA**

**STATEMENT OF MATTHEW SCHOONOVER**

Mr. SCHOONOVER. Thank you, Chairman Mfume, Ranking Member Stauber, and esteemed Members of the Subcommittee. Good morning. And, Mr. Chairman, I certainly hope I pronounced your name correctly as well.

I am honored to join you today to discuss ways to improve the government's efforts to contract with a special group of small businesses: HUBZone companies. But first I would like to tell you a little about me and my role in helping small businesses.

I am the Managing Member of Schoonover & Moriarty, an Olathe, Kansas-based law firm that counsels small business federal contractors. In my practice I work with clients on a broad range of issues, from complying with a myriad of federal laws, regulations, and contractual provisions covering their work with the federal government; to complying with the Small Business Administration's small business and socioeconomic program regulations; and representing them in performance disputes and bid protests.

Through my work with these companies, I see firsthand the benefits that federal contracting dollars provide to small businesses. Perhaps nowhere is this benefit more pronounced, though, than when the federal government contracts with HUBZone companies.

A HUBZone company is a company that is located in a Historically Underutilized Business Development Zone and that employs at least 35 percent of its employees who live in such a zone.

Several different types of tracts qualify as HUBZones, from census-designated areas to base closure areas and disaster areas. The unifying characteristic, though, is that each of these areas is in need of economic development.

By contracting with companies located in and that employ individuals who live in these areas, the HUBZone program seeks to develop whole communities—or, as the adage has it, a rising tide lifts all boats.

It is for this reason that I find the government's continuing failure to meet its HUBZone contracting goals to be particularly offensive. The Small Business Act asks the government to try to award only 3 percent of its prime contract awards to these companies. Historically, however, the government has fallen far short and, in fact, as the Chairman noted, it has never met the 3 percent contracting goal.

In 2020, the latest year for which we have data available, the government awarded only 2.44 percent of its prime contracts to HUBZone businesses. Considering, however, that many of these

awards were actually probably double counted among the other socioeconomic programs, the number of true HUBZone contracts is certainly lower.

Had the government met its goal, these areas in dire need of economic development would have received billions of dollars more in investment.

With this background, I am very happy that the Subcommittee is meeting today to discuss ways to improve the HUBZone program. In my written testimony, I provided some ideas to do so, but I wanted to flag a few for you here.

First, just as Congress mandated the Department of Veterans Affairs to prioritize service-disabled veteran-owned small businesses in its contracting efforts, so too should Congress require a different agency to prioritize contracting with HUBZone companies. This agency should be one uniquely focused on providing economic development, perhaps the Department of Commerce or Housing and Urban Development.

Second, work that was awarded to HUBZone companies should remain in the HUBZone program unless SBA specifically authorizes that work to be released for competition outside of the HUBZone program.

Third, the Department of Transportation's Highway Trust Fund should recognize HUBZone set-asides. Currently, it does not, meaning that these companies lose out on potential valuable contracting opportunities.

Thank you for the opportunity to join for this important discussion. I look forward to your questions and to the Committee's efforts to improve contracting with HUBZone businesses. Thank you.

Chairman MFUME. Thank you very much, Mr. Schoonover.

Ms. Bailey, you are recognized for 5 minutes.

#### **STATEMENT OF SHIRLEY BAILEY**

Ms. BAILEY. Thank you. And I apologize in advance for my voice. I am still battling COVID.

Chair Mfume, Ranking Member Stauber, and Members of the Subcommittee, thank you for the opportunity to testify today. My name is Shirley Bailey, and I am CEO and Managing Member of Summit Federal Services located in Oakland, Maryland. My company provides business process technical management support services to federal agencies.

We are an SBA certified HUBZone and women-owned small business, and I am also a proud Member of the Women's Procurement Circle.

I am testifying here today on behalf of the HUBZone Contractors National Council, where I serve as the President and Chair of the Board of Directors and have been an active HUBZone certified Member since 2000. The Council is a nonprofit trade association providing information and support for companies and professionals interested in the SBA's HUBZone program.

The Council strives to promote economic development in underutilized rural and urban communities as well as maximize success for companies participating in the HUBZone program.

The HUBZone program is designed to provide economic assistance to underserved areas by awarding federal contracts to small

businesses that operate and employ workers in those areas. The underlying principle behind the HUBZone program established 25 years ago remains the same today—to decrease unemployment and revitalize low-income communities by encouraging businesses to locate in these HUBZone areas.

We thank the Committee for its continued commitment to support small businesses doing business with the federal government. It is because of this Committee’s strong commitment to improving the HUBZone program that a substantial modernization effort was signed into law in 2018.

Unfortunately, challenges continue to plague certified HUBZone firms. Since the program’s inception, the government has never met its goal to obligate 3 percent of eligible prime contract dollars to HUBZone businesses. This represents over 25 years of missed opportunities and unawarded dollars for companies that operate and employ workers in HUBZones.

In the last 2 years, we have seen how crucial it is for government programs to adapt to changing realities, and the HUBZone program should be no exception. The workplace environment has dramatically shifted to embrace telework. While the SBA initially relaxed the eligibility requirement for the principal office during the pandemic, this requirement has been reinstated.

To account for the large percentage of contractor employees teleworking due to the COVID-19, the Council recommends adding flexibility to the principal office requirement and embracing telework.

Navigating business compliance during the pandemic has also been challenging for small businesses. The shift for many to telework brought additional compliance risks for HUBZone companies, especially with the residency and workforce requirements.

A continuing challenge is understanding these requirements, and we urge the SBA to provide clear guidance and reasonable timeframes for companies to adapt to these changes.

The Council also recommends the follow actions, which have been described in our written testimony, to increase awards to HUBZone companies and the communities they serve.

First, apply the HUBZone price evaluation preferences to task orders. A misinterpretation of the FAR has led many HUBZone small businesses to miss out on potential opportunities. The Council thanks this Committee for championing H.R. 5879 to make this change.

Second, expand the sole source contract opportunities for HUBZone companies. As government buying continues to trend towards utilizing large contracting vehicles and away from direct contracts, the ability for small companies to win sole source awards is more important than ever.

Minimizing the impact of Category Management is also key to ensuring maximal participation of HUBZone businesses in the federal market. We also applaud the Committee for your proposed bipartisan amendment to the fiscal year 2023 NDAA to exempt certain contracts from Category Management requirements.

Third, we believe the acquisition workforce needs additional training for small business contracting programs. Changes to the SBA’s small business contracting programs has necessitated the

need for recurring training on the requirements of the HUBZone program.

Fourth, change reporting requirements to accurately reflect contract set-asides. Agencies should report progress towards small business goals based on how the contract was solicited.

Fifth, revise the definition of “reside” and redefine the “attempt to maintain” requirement. These changes would make compliance easier for small businesses.

And finally, prioritizing local vendors. As mentioned earlier in my testimony, generating wealth in underserved communities is an important mission of the HUBZone program. We believe the program would be enhanced by an emphasis on using local businesses to perform government contract work in the area of the award.

The HUBZone program is needed now more than ever, as the number of HUBZone locations around the country has roughly doubled since Congress first created the program. The HUBZone contractor community is optimistic that the congressional actions to provide more certainty, flexibility, and fair requirements for the program will help companies across the country meet the program’s mission.

Our Member companies and all HUBZone certified firms are ready to compete on federal contracts to bring jobs, innovation, training, and economic empowerment to HUBZones.

Thank you for allowing the Council to testify at this very important hearing, and I look forward to answering your questions.

Chairman MFUME. Thank you very much, Ms. Bailey. We wish you a speedy recovery.

Ms. BAILEY. Thank you.

Chairman MFUME. The Chair recognizes Ms. Rivas-Hutchins for 5 minutes.

#### **STATEMENT OF INÉS RIVAS-HUTCHINS**

Ms. RIVAS-HUTCHINS. Good morning, Chairman Mfume, Ranking Member Stauber, and Members of the Committee. Thank you for the opportunity to testify today.

My name is Inés Rivas-Hutchins, founder and president of Intec Group, LLC. I am pleased today to also be representing WCOE, a national trade association representing the interests of women owners and executives in the construction industry. WCOE focuses on helping women-owned businesses and women executives succeed in the construction industry.

Intec Group is an economically disadvantaged woman-owned small business, SBA 8(a) program participant, and SBA certified HUBZone firm in the State of Kentucky that specializes in all aspects of general construction. Intec Group has a successful history of providing construction services to the federal government, Department of Defense specifically.

I came to the United States from Venezuela 23 years ago with a background in architecture studies, but it was construction management that became my passion. I started Intec Group in 2015, capitalizing on the knowledge I gained and connections I made throughout my career. Intec Group has been an 8(a) program participant for 2 years and a HUBZone certified contractor for 5 years.

Although being a woman-owned small business since the inception, the majority of my work, my federal work, has been throughout the HUBZone program, which has maximized my company's growth.

My HUBZone journey is different than some. I became HUBZone certified because a contract opportunity was set aside as such, which propelled me to getting Intec Group HUBZone certified.

And I think this is important. It shows that more HUBZone set-aside contracts will produce more HUBZone certified businesses and not just the other way around.

To date, Intec has been awarded a total of 225 contracts in the order of \$151 million, of which 121 awards were HUBZone set-asides. It is fair to say that the HUBZone certification accounts for over 50 percent of my company's revenue.

The HUBZone program allows us to be positive contributors to our community and to give our workers the opportunity to develop and provide for their families. The HUBZone program allows us to bring those federal dollars back to our community, using local talent.

It is no secret there is a talent shortage in the construction industry, and we need all the people we can get. HUBZone ensures there is an incentive for educated and talented workers to stay in Kentucky. We want them there where they grew up and not having to move to big cities to chase work.

I think the Committee would like to know there are certain changes to the program that have been very beneficial to my firm. For instance, map changes. Recent changes have helped increase predictability, such as increasing to 5 years the HUBZone designation map, allowing firms to be considered a HUBZone throughout the life of a contract.

New long-term investment rules for the main office location help me and many others. I recently made a significant move to establish our Lexington, Kentucky, office to a HUBZone area, and a relocation would be very costly for my firm.

I found the SBA site visitation program a very positive step to reduce fraud. We had a site visit from an SBA district official within our first year of certification. And, in fact, this visit has strengthened my relationship with my SBA business development specialist. Site visits are a good investment to keep a check on companies that might want to game the system, and WCOE would recommend it continue.

My personal experience has been overall very positive, but there are always changes that could help, such as a more vigorous marketing and education campaign aimed at agencies and the contracting officers.

Contracting officers say they are unable to find enough qualified firms to set-aside contracts, but, on the other hand, HUBZone companies within our group, WCOE, have indicated they have a hard time finding HUBZone contracts.

Incentives for agencies to meet goals without consequences for not meeting the goals. There should be at least some incentives for meeting them.

Reform the Procurement Scorecard. WCOE would like changes with more transparency and accuracy for the SBA Procurement Scorecard.

Subcontracting plan compliance. For WCOE companies, subcontracting is sometimes the only way to enter the federal marketplace. It allows construction companies to build a positive past performance record. As with agencies, there is no incentive for meeting or consequences for failure to meet the subcontracting goal.

Thank you again for your focus on the HUBZone program and for all your work supporting small businesses, and I look forward to answering your questions.

Chairman MFUME. Thank you very, very much for your testimony.

I want to recognize the Ranking Member, who will introduce our other panelist.

Mr. STAUBER. Mr. Lillard, you are up for 5 minutes.

#### **STATEMENT OF BRENT LILLARD**

Mr. LILLARD. Chairman Mfume, Ranking Member Stauber, and Members of the Committee, thank you for the opportunity to testify before you today. My name is Brent Lillard, and I am the CEO and co-founder of GovSmart, Inc.

We are an SBA HUBZone certified IT solutions provider and value-added reseller to the federal government and its large prime contractors. My partner, Hamza Durrani, and I started the company out of our kitchen in a rented house in the HUBZone of Charlottesville, Virginia, in late 2009.

Today, GovSmart has successfully completed over \$1 billion in federal prime contracts and hundreds of millions of dollars in federal subcontracts. We currently have over 70 full-time employees and continue to grow, along with the federal government's HUBZone requirements. We are also Members of GovEvolve, a leading advocacy organization for small and midsize businesses that support government innovation.

I have personally been working in the HUBZone program and each of the other socioeconomic programs since 2004, when I first entered the industry as a federal sales representative. My diverse experience working for and running multiple companies from each socioeconomic category has given me a unique opportunity to observe their strengths and weaknesses firsthand.

I believe the HUBZone program can serve a crucial role in reaching underserved communities like ours. I also believe the program has some endemic challenges that need to be addressed to maximize its reach.

The method envisioned by the program was to certify HUBZone qualified companies that commit to maintaining a workforce comprised of at least 35 percent HUBZone residents, with the hope that those employees would earn enough to throw off the burden of historical poverty and reinvest their wages into their communities.

In my experience, it has been very difficult to maintain the 35 percent HUBZone residency requirement for our employees due, in part, to the social and economic realities faced by HUBZone residents in our city.

Difficulty in hiring HUBZone residents has long been recognized by the HUBZone program, and SBA's new shift towards allowing legacy employees has helped tremendously.

However, in an update to the SBA's Frequently Asked Questions published on June 24, 2021, the SBA included a rather Earth-shattering qualification change: that employees must have established their legacy residence within the HUBZone only after December 29, 2019, the date the rule became final.

Companies relying on pre-2019 legacy HUBZone residence, per the written instructions from official SBA HUBZone attorney advisers, may find themselves outside the requirement through no fault of their own.

These companies, such as mine, must now take drastic and immediate measures to ensure program compliance. We must either terminate good employees no longer living in the HUBZone or quickly hire potentially underqualified employees from it.

The biggest challenge to our category is the overutilization of the other categories due to the lack of parity amongst the programs. HUBZone companies do not have direct award authority in the FAR, and the goal is substantially lower than that of the SDB and woman-owned programs.

GovSmart was also a small disadvantaged business under the SBA's 8(a) Business Development program during our first years before we graduated from the program in 2019. During our years as an 8(a) SDB, we greatly benefited from the program and received many direct awards. We were nevertheless aware that our concurrently held HUBZone status was a distant second in terms of business growth and development.

When we graduated early from the 8(a) program in 2019, we had, fortunately, already transitioned to lean primarily on our HUBZone status with our newly acquired governmentwide acquisition contracts, such as NASA's SEWP V and NIH's CIO-CS. These large multiyear contracts, which were narrowly awarded to GovSmart, enabled us to survive the loss of 8(a) direct awards, at least temporarily.

Our future is uncertain because we struggle to make the case to government agencies for why they should set a given procurement aside for HUBZones. They know, as we do, that the lack of direct award authority means a lack of efficiency. This contributes to the government's continued failure to meet the 3 percent HUBZone goal.

Additionally, the government continually receives an A grade for small business awards while underperforming in HUBZone awards. This has happened every single year since 2007 and comes from the SBA scorecard analysis algorithm, which allows extra credit to make up for shortfalls in one socioeconomic program by overachieving in other programs that are much easier and faster to use.

GovSmart is a reseller of IT goods and services. With our help, the agencies do not need to directly survey the universe of available solutions to a given tech problem. They can, instead, pose the requirement to us and our competitors and, with our mass knowledge and experience, we can compete to recommend the best possible technology solutions for the lowest price.



The IT FAR industry, unfortunately, does not have an industry code that is descriptive of our industry. Rather, we must classify ourselves under NAICS codes that are not appropriate for our services, creating additional compliance issues and often resulting in a loss of opportunities.

An industry-specific NAICS code would help my firm and all other small federal IT resellers across the country to continue to provide the government with critical technology solutions.

In closing, the HUBZone program is a valuable way to inject federal procurement dollars into underserved communities. However, the program would benefit greatly from the parity recommendations outlined in my testimony.

These changes will help all HUBZone companies to continue benefiting their underserved communities.

Thank you for your time, and I look forward to answering your questions.

Chairman MFUME. Thank you for your testimony.

I want to thank everybody who has been here to provide information and real experience before this Committee.

I think it is clear we all agree that there is a problem here, and how we go about tackling it will be how we are measured as a Congress and as a Committee.

But it is frustrating, to say the least, that for 20 years we have not been able to reach a 3 percent goal. And I agree, there has been a lot of double counting, so maybe we are further underwater than we actually realize.

Mr. Schoonover, can you take a minute to talk about this whole notion of double counting? It was a part of your testimony. I just want to make sure that we explain it here so that people understand that there are perils to that.

Mr. SCHOONOVER. Thank you, Mr. Chairman.

Yes. When the federal government determines the amount of awards that are given to small businesses or any other socioeconomic category, be they the 8(a) program, SDVOSBs, WOSBs, or HUBZones, one of the things that the government can do is, say, for example, an opportunity is set aside for woman-owned small businesses. If that woman-owned small business also happens to be a HUBZone company, then the government can claim credit not only for the WOSB award, but also under the HUBZone category.

So we have a problem where the government is not actually tracking the tools—easily tracking, I should say—the tools that it has available to contract with these businesses, through HUBZone set-asides and directed awards to HUBZone companies.

Beyond that, the goals also capture those awards that were awarded under full and open competition, meaning awards that were unrestricted. Anybody could bid on those. And if a HUBZone company happens to win that contract award, then that would be counted as complying or going towards the government's 3 percent HUBZone goal.

Chairman MFUME. Thank you very much.

One other quick thing, and I want to go to another witness here. In your testimony, you suggested that maybe this body and the Congress ought to look at having a different agency to oversee com-

pliance. Can you take a quick moment? We don't have a lot of time, but I would like to hear your thoughts.

Mr. SCHOONOVER. I am sorry. That may not have been clear. What I was suggesting in my testimony is, much as Congress mandated the VA to prioritize contracting with SDVOSBs, I think it would be beneficial if Congress also mandated a different agency to prioritize contracting with HUBZone companies.

That is, whenever that agency believes there are two or more HUBZone companies that may submit a bid at a fair and reasonable price, that agency would be mandated to award that company—or, excuse me, set that procurement aside for HUBZone companies.

Chairman MFUME. Okay. Thank you.

And, Ms. Bailey, when we look at the lack of impact that we are having in this program and the information that is being collected, do you have some thoughts, as a nonprofit trade association, of what you would like to see in terms of information collected to be able to better measure success or identify failures?

Ms. BAILEY. Yes, yes. Yes, several metrics that we consider to be important would be, of course, the number of HUBZone set-aside contracts solicited in the dollars awarded for each of those, but also to consider that as a percentage of the total HUBZone dollars that are set aside.

Why this is so important for the HUBZone program is because the HUBZone program is the only socioeconomic program that has the attempt to maintain and requires a benefit to be made based on a HUBZone set-aside contract.

Also, the number of contracts and contract dollars being performed in a HUBZone area. If a contract is performed at a contractor site, like Matthew might be considering too, it is considered HUBZone, because chances are it is going to be performed in that HUBZone area.

The number of HUBZone employees employed over year to year, to be able to track that information.

Also, the number of companies that have purchased properties and/or have entered into long-term leases, because that shows a major investment in the HUBZone areas. The SBA has indicated that one of those areas that they incorporated was supporting the long-term investment in communities. So being able to track that information would be critical.

The number of—

Chairman MFUME. Thank you. Thank you, Ms. Bailey. I am sorry. I am going to come back around to you. We don't have a lot of time in this first discussion, but if you would stay with us, have a follow-up.

Mr. Lillard, before we move on, I want to yield to the Ranking Member. I think the legacy program was a great idea also. I was not aware of the effective date and the way it handcuffs individuals like yourself and others. Can you take a quick moment?

Mr. LILLARD. Yes, absolutely. Thank you.

One thing is that originally when they made the rule, it didn't have the rule that said it had to be that particular date. We actually reached out to the SBA ourselves. Our counsel reached out to the SBA, asked specific questions.

And their attorney advisers responded to us and were very, very clear that it did count all of our older HUBZone employees that had moved out of the HUBZone that we had basically helped make successful enough to afford to move out of the HUBZone.

They told us that that was the case. We have it in writing from them. We used that as our information to decide how to grow our company. We hired a bunch more people. Now we have 73, I think, or 74 employees.

And then, actually, while we were preparing the speech for this is when we noticed in the Frequently Asked Questions that they had updated it. And that is not the official procedure that they are supposed to go through, as far as I am aware, to announce changes, to make changes, and to formally legislate them, I guess.

And so we are kind of protesting that right now with the HUBZone. We talked to the director of the HUBZone—or, excuse me, the program manager of the HUBZone program this week and talked to them. They basically told us that they are going to—it is on hold. They are going to wait for the director to get back, because we have a unique circumstance.

Chairman MFUME. Thank you. And we are going to have staff to follow up also with the SBA to get some clarity.

My time is way over, done, and I want to yield to the gentleman from Minnesota, Mr. Stauber.

Mr. STAUBER. Thank you, Mr. Chair.

Mr. Lillard, one of the longstanding issues of this Committee in its examination of the HUBZone program is the inability of the SBA to track program effectiveness.

Has the SBA gathered any data from your company or other HUBZone firms that you know of in order to assess program effectiveness?

Mr. LILLARD. Thank you.

They gather a plethora of information from us every year. It is everything from W-2s for our employees. They definitely thoroughly vet to make sure that we meet the qualifications.

And the online databases, like [fpds.gov](http://fpds.gov), have all the information for who receives what contracts. So I would assume they are using that to verify that certain companies are receiving their fair share of the awards. But I have no visibility to the exact specifications that they use.

Mr. STAUBER. Have you given the SBA any suggestions or ideas that they have incorporated into the overall effectiveness of the program?

Mr. LILLARD. Excuse me, would you repeat that question?

Mr. STAUBER. Have you given the SBA any suggestions or ideas that they have incorporated to allow the HUBZones to be even more effective?

Mr. LILLARD. Yes. We are very outspoken throughout all government agencies and especially with the SBA. So we talk to them about all these problems. They have told me that we are one of the most outspoken of the group.

Mr. STAUBER. So is the SBA doing anything to track the program effectiveness that you are aware of?

Mr. LILLARD. I assume they are, but I am not sure. I just know that they have the tools at their disposal to track that, but I am not aware of what their exact metrics are for that.

Mr. STAUBER. And this is for—the next question is going to be for really any witness.

In response to the COVID-19 government lockdowns, the SBA undertook an unprecedented role in assisting American small businesses, a role that seems to have stretched the agency's capacity to the limit at times.

As we look at possible reforms to best position the agency moving forward, have you observed any operational challenges in the HUBZone program's capabilities in light of the pandemic response role the agency assumed?

And this is for anybody.

Mr. Schoonover, you look like you want to answer. Go ahead.

Mr. SCHOONOVER. Well, thank you, Ranking Member Stauber.

I will say in my impression, working on behalf of clients, the SBA has really punched above its weight in responding to COVID-19 and I think in a lot of ways should really be applauded for their efforts to help keep small businesses afloat, quite frankly, during very difficult times.

Certainly that has been a stress on the SBA. I think they are one of the agencies that is overworked and understaffed. And I would imagine that, yes, that has caused some issues with delays in certification for HUBZone certifications, delays in review process, and the like.

Mr. STAUBER. I appreciate you mentioning the SBA that did a great job during COVID. We had our Minneapolis rep that did a tremendous job throughout our entire district. And it wasn't easy, especially trying to get through some of the EIDL loans and stuff like that. They did a wonderful job. So thanks for bringing that to our attention.

Mr. Schoonover, you mentioned in your opening statement, you talked about working with small businesses and the regulations that are put on small businesses.

Last year, in the year 2021, there were over \$201 billion of additional regulations placed on small businesses across the United States of America. And these aren't my numbers, these are administration numbers.

When regulations such as the amount that were put on, is that helpful or hurtful to the businesses that you represent, and at times is it a hurdle and maybe some redundancy?

Mr. SCHOONOVER. Yes. I think certainly regulations tend to complicate work with the federal government, but that is not to say that they don't serve a purpose.

I will say that the vast majority of my clients—well, all of my clients—really want to comply with the federal regulations. They want to do a good job on behalf of the government. And they certainly go out of their way to make sure that they are doing that.

Mr. STAUBER. And I would say that the vast majority of small businesses across this great country who we know are economic drivers always attempt to do their best to follow the laws.

But the additional regulations on small business in coming out of COVID I think was stressful enough and we know wasn't nec-

essary, because that is what I am hearing from the small businesses that are in my community. They talk about not only inflation, but they talk about the regulations that have been placed on them over and over again.

And I think it is up to the overall Committee, including the Chairman and I, to work on some of those, reduce the impact, negative impact for the most part, on our small businesses.

Mr. Chair, I am over time. Thank you for your patience.

Chairman MFUME. Thank you very much, Mr. Stauber.

The Chair would like to recognize the gentleman from Louisiana, Mr. Carter, for 5 minutes.

Okay, we will come back to Mr. Carter, who is having a great conversation. So we will come back to Mr. Carter.

Mr. CARTER. I am ready now.

Chairman MFUME. Okay. Go right ahead.

Mr. CARTER. Mr. Chairman, thank you.

Ranking Member, thank you very much.

And thanks to all of our presenters.

I have got a quick question, because one of the concerns that we hear consistently is how do we get more people involved in utilizing the resources of HUBZones and the various opportunities.

So if there are viewers that are looking, what advice would you give a person that is interested in applying for and taking advantage of HUBZones? Any one of you can answer that as a first point.

No advice?

Ms. RIVAS-HUTCHINS. I would like to answer that question.

I believe that the government has a lot of resources for businesses that are interested. Local PTAC offices are really good about helping businesses certify, apply for the certification, the HUBZone certification.

I believe there are several contracts available at HUBZone that once they go through the process and they get certified they are able to apply for.

Thank you.

Mr. CARTER. Ms. Bailey?

Chairman MFUME. Mr. Carter, you still control the time.

Mr. CARTER. Yeah, I was hoping that some of the others might have some other information that they might share to viewers who are interested, your ups, your downs, your experiences. And equally as important is what can we do, as a voting body, to make it better?

Mr. SCHOONOVER. Congressman, if I may, to the last question, I think from my vantage, the number one thing that can be done to make the HUBZone program better is, quite frankly, to award more contracts under it. I tend to think that if those contracts come, you will certainly have more companies that see the value in the HUBZone program and want to participate.

But given the time and expense that it takes to comply and to maintain your certification, unless and until there are more contracts awarded under the program, quite frankly, it can be a tough sell for some businesses.

And so I think the overarching goal of fixing the program, in my opinion, should be to encourage more awards to be made under it.

Mr. CARTER. Mr. Schoonover, why do you think, in your estimation, what has been the issue with awarding contracts? Has it been too cumbersome of a process? Has there not been enough opportunity? Has there been fraud in the system that slowed the process down? Any one of those, all of the above, or maybe I missed them all.

Mr. SCHOONOVER. How much time do we have?

Mr. CARTER. You got about 30 seconds, because I got about a minute 40.

Mr. SCHOONOVER. I think the combination is an "all of the above" answer. I don't think that there is one specific reason why the HUBZone program has been underutilized.

I think there is a lack of education and a lack of insight of contracting agencies to actually use the tools that are available.

SBA, to its credit, over the last few years has tried to make the program more accessible, both for certified businesses and for contracting agencies. And, hopefully, those changes will start to bear fruit.

But I tend to think still that the biggest problem with the HUBZone program is that not enough awards are being made under it and that if more awards are made under the program, certainly there will be more HUBZone certified firms. And agencies then I think will be more encouraged to use the program as well.

Mr. CARTER. Do you think it would be helpful if SBA and other experts in the area of HUBZones did more outreach going into the community, as I have suggested to SBA that we do more doing business with the federal government opportunities to make it plain? We should not hide the ball and make it difficult for businesspeople to partake of HUBZone opportunities.

So, Mr. Chairman, I would encourage that SBA engage with us to go through our congressional districts for sure to engage and have more opportunities for outreach.

If you guys were starting, Mr. Schoonover, if you were starting out new and had the opportunity to have a townhall of sorts with Members of SBA to talk about HUBZone, would that have made your entree into the system easier?

Mr. SCHOONOVER. I may not be the most qualified person on the panel to answer this, as I am not a HUBZone company myself, but certainly I don't think it would hurt SBA to have those opportunities.

I would also say that internal government agencies also need to benefit from that education, to understand what the HUBZone program is and the contracting tools that are available under it. I think contracting offices all across the executive really need to be made aware.

Mr. CARTER. My time is expired. I yield back, sir.

Chairman MFUME. Thank you. The gentleman yields back.

The Chair will now recognize the Ranking Member, Mr. Meuser, the gentleman from Pennsylvania.

Mr. MEUSER. Thank you, Chairman Mfume, very much.

Thank you for testifying. I appreciate you being here. It is a very interesting topic, something that I think has very much bipartisan support, which is great, and for all the right reasons.

Many of us have districts, such as I, where we have small cities that need revitalization, and some of that seems to be occurring kind of on a spotty basis. Like where my district is in southeast and central Pennsylvania, it is sort of growing from the suburbs from the southeast and from Allentown.

But I think, like the Chairman and many of us here, I don't want to wait around another 10 years to see some of this progress taking place, because some of these cities have the people, have the resources. And when I say cities, they are more like towns. But they need a catalyst. They need a spark.

And that is where we can come in, and with this type of contracting and HUBZone initiative a real difference can be made. So I am paying a lot of close attention to everything that you have to say.

So, Mr. Schoonover, you gave a couple, you gave three ways that we needed to improve this program. One, you used the word "compel" for the government to utilize in order to achieve the 3 percent. That will definitely require more outreach, because we just can't compel if the resources aren't there, if the companies aren't there.

I know in my district I am not so sure those companies are there to actually capture the contracts within or around the HUBZones. They simply don't necessarily exist or they are simply not aware of the HUBZone opportunity.

And we don't necessarily just want a company—well, in some cases we do—moving from one end of a county to the other. Actually, in many ways that provides the advantages that we are looking for to advance these small cities.

But the 35 percent legacy issue seems to be something that we can definitely deal with, and I hope everybody is listening to that, and we can work on that.

And you mentioned this "always" clause, I will just call it that right now. And then one of the other witnesses stated how at least for the length of the contract. And I think the SBA or the oversight should be able to at least have some ability to evaluate, to evaluate the eligibility over time, because you do hear some things about fraud in here. And you can see how that could occur, but I am not so sure that that is too big of a problem.

So let me just go to you, Mr. Lillard. Expand for us a little bit more on what you think can be done, A, to preserve, but, B, to improve.

Mr. LILLARD. Sure. I appreciate the question.

I think that parity is the biggest issue. I think that the HUBZone program is overshadowed by the program, the SDB 8(a) program specifically.

That is easiest program for contracting officers to use. They have a huge stack, if you go in their office and meet with them, they have a huge stack of all their requisitions that they have to get out, and it is a real pain for them to get them out in time. And so they are always, in my experience, going to use the easiest, fastest possible way.

8(a) contracts cannot be protested, so you don't have to worry about not only not the competition, but you don't have to worry about people coming in and slowing down the process by saying,

okay, you know, it wasn't fair. So that is a huge advantage for them to do that. Also, it has a higher goal.

There are various reasons, but I would say that the number one thing that you could do to improve HUBZone is to basically put it on parity with those other programs. I think that when you have the honey there, the increased incentive, I think that all the ants will come. You will get a lot more HUBZone companies that will pop up if they feel that they are going to be actually utilized.

We have a very, very low margin structure business just to be competitive. And I think the HUBZone industry in general is extremely competitive, and it is going to be very hard to go into the HUBZone and find people that are currently qualified to run a company from scratch to do business specifically with the federal government, as complicated as it is.

Mr. MEUSER. Thanks.

Mr. Schoonover, you brought up how the SBA is understaffed. I agree. And they did a terrific job in Pennsylvania, in my district, during the course of COVID and all the PPP and everything else.

I did want to bring this up. I introduced a bill, Truth in Small Business Contracting Credit Act, which would limit federal agencies to counting contract awards towards one goal, instead of multiple goals, as currently allowed. So I would certainly encourage, Chairman, the Committee to consider that bill.

I would like to forward it to you folks and get your input on it as well to see what you think. And again, I thank you for your testimony.

With that, I yield back, Mr. Chairman.

Chairman MFUME. Gentleman yields back.

Ms. Rivas-Hutchins, I want to go back to you and go back to Ms. Bailey if we are able to have a second round here.

But what I would like to do at the moment is to recognize the gentleman from Wisconsin, Mr. Fitzgerald, for 5 minutes.

Mr. FITZGERALD. Thank you, Mr. Chairman.

I find interesting, I think, listening this morning, kind of to the take on whether or not any of these types of programs that are created, either at the local level, State level, or federal level, have the impact that is oftentimes anticipated, I think.

In Wisconsin, we have Renaissance Zones, which changes the Tax Code and manipulates kind of the Tax Code to allow local investment to happen. A lot of times there is an economic development corporation that is involved maybe at the county level or the municipal level, and then there has been some success.

And then, obviously, the one nationwide is TIF districts or TID districts that offer the same types of changes to the Tax Code for a short—or I should say not short, necessarily, temporary period of time to make sure there is more investment that is made.

I think the frustration I see with kind of the discussion today is that this is—it has been around since 1997. I think it still is viewed as having limited success between 1997 and then 2017, when it was revisited with a bipartisan bill to reform the HUBZones. And since then, you still aren't seeing the impact, I think, that many communities had anticipated.

So in my estimation it has kind of like run its course. And I think that is why in the opening statements and in the opening



comments there was a question about whether or not it should even be kept around or should it simply be scraped and start from the ground up and rework this.

I don't have the confidence in the SBA, I think, that certainly some other people may have, whether they are people that are involved kind of in economic development or certainly even Members of Congress that continue to look at the programs and say: What is the measuring stick? When are we actually going to be able to determine whether or not this is being effective?

So, I guess, Mr. Lillard, the question I would have for you is, what do you think the 30,000-foot perspective on this program is or any of these other economic development programs created by the government?

We can almost remove COVID from the discussion, unique thing that hopefully never happens again at the scale that we saw and hadn't anticipated and didn't have to really work in and around it, not having happened for a hundred years.

But I thought the original comments were maybe there is a better way of doing this. And I would just like to hear your thoughts on that.

Mr. LILLARD. I would say the biggest thing is just enforcing what you have already got. From my personal perspective, I know that GovSmart would lose 100 percent of its employees if we lost the HUBZone status. If the HUBZone program went away, there are a lot of disadvantaged employees that we have hired that otherwise will not have very good opportunities in Charlottesville, Virginia, who would be out of a job.

And so I think that it is a very powerful program. I think the biggest challenge is that it is not fully utilized to the extent that it was intended. I think that if it was, there would be a lot more companies that are doing it. I think there would be more profitability involved and therefore it would lead to more opportunity and people opening up companies in the HUBZone.

But I do think these programs are very effective. And we have given back so much to the community, not just in hiring people, but also just reinvesting and donating money specifically in HUBZone areas. And I know a lot of companies that are successful do that. I know that Charlottesville would feel it if GovSmart went away because we do a lot in the community.

So I would say it is not that the HUBZone program doesn't have the potential to work, it is just that the rules aren't set in stone where they have to make it work.

Mr. MEUSER. Do you guys participate in any other economic development programs at the local level?

Mr. LILLARD. We did. We were in the SWaM program for a little while, but we never were able to make that work. We couldn't win contracts with that designation. So we stuck to federal.

Mr. MEUSER. Yeah. I mean, I think there are certainly only a few economic development tools that are available to a municipality, and certainly a TIF district is one of them.

And ultimately a school district may benefit, that after a 12-year run on a TIF district that suddenly the revenue has been created, there has been economic development, and then that money makes

its way back into the community. I mean, it is obviously a true and tested model that has worked across this country.

Do you feel that there is support or that there is interaction at the local level with HUBZ and whether or not people are aware of it, other than if we just award more contracts more people are going to show up? That seems like it is counterproductive to me.

Mr. LILLARD. Yeah. I mean, from my perspective, I think just the incentive to win more contracts is what will ultimately bring more people in.

But I would say no on the local level, not at all. There are not enough HUBZone companies at the local level, generally, to have an entire committee or department to have an initiative to go do that. I think it would be too hard to find them.

But I think that from my perspective, when there is more benefit for being a HUBZone company, more companies are going to take what is preestablished, their successful business model, and move it into a HUBZone, or take a business model that they have they want to start from scratch and start it in a HUBZone. I think it is a good program for starting brand new things and bringing it in, rather than finding people that are already successful doing it.

Mr. MEUSER. Well, thanks for being here today.

Mr. LILLARD. Absolutely.

Mr. MEUSER. And yield back, Mr. Chair.

Chairman MFUME. The gentleman yields back.

I just want to announce to our witnesses, we are going to do another round of questions. And thank you again for being here.

Ms. Rivas-Hutchins, I really want to go back and start with you. I was impressed, needless to say, of your own story about how you got started and what you faced over the years.

We keep hearing about the unmet goal, and the real issue, in my opinion at least, is underutilization and enforcement.

In fiscal year 2020, only 1.6 percent of the dollars awarded were awarded to HUBZone firms through subcontracts. And because you are in a unique space in the construction industry, where subcontracting is in fact very common, I would like to get your thoughts since everybody else has had an opportunity to weigh in on this. And I know you are challenged with trying to hold on to talent and workers who are chasing opportunities in other States.

But could you take a minute and give me your thoughts on that as well?

Ms. RIVAS-HUTCHINS. Absolutely. My pleasure.

I believe my experience, construction jobs, are such a team effort. So prime contractors in the industry like to use subcontractors they know and they have worked very well with, which creates a problem for new small HUBZone WCOE—W—woman-owned small business contractors. And when you don't have a penalty for general contractors to meet the subcontracting goals, I think you are exploiting those companies from competition.

So I do believe in the subcontracting world. If we were to have better consequences and incentives to meet subcontracting goals, that will help increase the 1.65 percent of the HUBZone subcontractors for sure.

Chairman MFUME. What is your challenge with keeping workers? I mean, has it gotten better or worse since the pandemic? Are

there some lessons there for contractors, subcontractors such as yourself?

Ms. RIVAS-HUTCHINS. Yes, sir. I believe I am very lucky to be in a rural area in Kentucky. We have great talent. I do believe the shortage of talent in the construction industry has to do more with just what we are facing across the nation. A lot of great workers are retiring and not enough to come in and take on the roles of the retiring workforce.

In our location, in western Kentucky and near Fort Campbell, we are very lucky to have good talent. We have a big area that we can draw really good workers from. That is where our main area of work is, in the western Kentucky, Louisville, Kentucky area; Nashville district of the Corps of Engineers as well.

So we do see a problem with shortage of workers, but I don't think it is specific to the HUBZone in my personal experience, because I do have a very vast rural community to reach out for and work.

Chairman MFUME. Thank you very much.

Sir?

Mr. LILLARD. [Inaudible.]

Chairman MFUME. Yeah, I don't have a lot of time, but if you can do it in 30 seconds, that would be great.

Mr. LILLARD. I would say that the difficulty to hire is a real thing. There is a significant lack of skilled labor.

The biggest thing that we have had a problem with is that it is hard to hire people because they lose their government assistance. I have had so many employees that come on board and they find out that they are going to lose their government assistance when they get the job that pays better, they lose their Section 8 housing and all these other things. And they are just like: Sorry, it is not worth it for me to work. And it happens over and over again. So I would definitely consider that as a factor.

Chairman MFUME. Thank you very much.

And, Ms. Bailey, let me come back to you for a second.

In 2017, Congress required the creation of performance metrics for the program. However, the data that continues to be collected by the SBA is very limited. It does not, in my opinion, assess the impact HUBZones are having on their communities.

And so as a nonprofit trade association, is there some information or data that you would like to see collected in an effort to really measure the program better and promote economic growth?

Ms. BAILEY. Yes. One I think is the number of companies that are entering into long-term leases or purchasing buildings and renovating in those areas. I think that that is some critical information we need to start collecting.

The number of HUBZone employees that are being employed. I am starting to lose my voice.

And then also another major thing that we need to be able to quantify is those softer investments, like Mr. Lillard was talking about, is how these companies are giving back—the workforce training programs, the internship programs, the contributions to the local communities, the schools, the hospitals, those types of things that are all part of this HUBZone program.

And what we find through the HUBZone Council is that a lot of our Members in the HUBZone firms are participating very, very highly in their local communities, and that this information becomes very critical for us to be able to identify the real impact that we are seeing in these areas.

Chairman MFUME. Thank you very much.

My time has expired.

The Chair would like to recognize the gentleman from Pennsylvania again, Mr. Meuser.

Mr. MEUSER. Thank you again, Mr. Chairman.

So I would like to just talk about a couple of regular or—or regular—everyday business issues facing small businesses as I assess it and am fully aware from visits within my district and the micro and macro effects on our economy taking place.

So inflation, how detrimental is it to you, particularly since when you are dealing with federal contracts you can't raise your prices? How is that affecting your net income? And in the end, what needs to be remembered, how that actually affects the level of tax revenues received?

So maybe Mr. Lillard can comment on that?

Mr. LILLARD. Sure. I have noticed a huge effect of inflation on the local community. I haven't noticed a big impact on our HUBZone business. The reason is that everyone knows what their general costs are regardless of inflation and then they mark it up as much as they think they can to win the deal. So I think that it is kind of everyone's price goes up at the same time when their costs go up.

So for me, personally, I haven't noticed a big impact. I have noticed a huge impact on the local area. It is certainly affecting the disadvantaged community the most when the cost of groceries goes up and things like that.

Mr. MEUSER. Okay. So that is noticeable. The most disadvantaged are clearly since a dollar extra for a pack of hotdogs or whatever it might be is a percentage of someone's income.

Mr. LILLARD. We are loaning out electric scooters to people in the community, for example, because they can't afford gas. So there are all kinds of things that are going on with that.

Mr. MEUSER. I see.

Mr. Schoonover, you have something to add on that?

Mr. SCHOONOVER. Yes, Congressman.

I would say that it is no secret that inflation is obviously hurting a lot of businesses, particularly small business federal contractors who, in my experience, work under the fixed-price contract scheme. Meaning, the price they bid is the price the government is going to pay, and if that business' costs increase, then, well, it is up to the business to eat those costs. That is their problem, not the government's.

And recently we saw DOD issue a memorandum that essentially instructed its contracting officials in the context of a fixed-price contract not to consider requests for equitable adjustment or contract claims seeking to recover those costs. And I think, though certainly DOD is within its right to do so, I would say that that is probably a very shortsighted and very harmful impact to small business federal contractors.

And I would certainly encourage the government to think about ways to adjust contract prices even under a fixed-price contract if inflation exceeds a certain percentage. Particularly for HUBZone businesses, that is vitally important because obviously, as inflation continues to increase and as those pressures continue to exist, the development for those areas is going to be lower and lower.

So I would encourage Congress to encourage federal agencies to work with particularly small businesses under a fixed-price contract to really deal with those concerns.

Mr. MEUSER. All right. Great.

I also want to go back to this bill that I mentioned, Truth in Small Business Contracting Credit Act, that the double counting puts you at a disadvantage, right? You are in the HUB.

Mr. LILLARD. Absolutely. And we used to be 8(a) certified as well, so we are familiar with how that could benefit a company that has both statuses. It certainly reduces the impact of being a HUBZone when you don't have both. It makes it much harder.

I think you will notice the goal achievement will go down when you stop double counting, but that will mean more opportunities for HUBZones that naturally are winning them because they are HUBZone.

Mr. MEUSER. Right. It is really an unfair score that they are using to support their quotas or whatever it might be.

Mr. Schoonover, comment on that?

Mr. SCHOONOVER. Oh, I completely agree. And I go back to the point of really in order to improve the program, first of all you need the data to show really where that metric is.

And second of all, I think it is an issue with contracting agencies who aren't utilizing the program as much as they should and really aren't seeking out those HUBZone contracting awards.

Mr. MEUSER. Great. Well, I look forward to continuing the conversation with both of you as we are committed to—I certainly am—to improving this situation so it is utilized that much more effectively for cities that really need this level of revitalization.

So with that, Mr. Chairman, I yield back. Thank you.

Chairman MFUME. Thank you very much. Gentleman yields back.

I would like to thank the witnesses again for appearing before the Committee, both here and on the screen. Your testimony has really shed some light on what is working and even what is not working within this program and the SBA, and the actions that Congress should, must, and hopefully will take to make this more efficient and effective.

Some Members of this Committee have heard me say before that I sat on this Committee in 1987 when I first got here. Ronald Reagan was in the White House. Gas was \$1.60 a gallon. And the issues that we are talking about today were about to be taken care of in the next decade with the creation of this program.

And I leave and go back, come back 24 years later, and it is like *deja vu* all over again. So it is frustrating to me, particularly, to sit here and to see what is not working and to know, number one, SBA has to do a better job of policing itself. Number two, if we don't enforce existing laws and policies, we will never get anywhere. And number three, we have got to find a way to get more

people participating in the program. The underutilization here is just unbelievable.

So hopefully that will take place as a result of this hearing. I look forward to working with my colleagues on both sides of this issue and on both sides of the aisle to advance legislation and to improve enforcement in the HUBZone program until the program's mission is achieved.

So again my thanks to all of you for being with us.

The Committee hearing is now adjourned.

[Whereupon, at 11:20 p.m., the Subcommittee was adjourned.]

**Written Testimony of Matthew Thomas Schoonover**

**U.S. House of Representatives**

**Committee on Small Business  
Subcommittee on Contracting and Infrastructure**

***A Review and Assessment of the HUBZone Program***

**July 14, 2022**

Chairman Mfume, Ranking Member Salazar, and esteemed Members of the Subcommittee:

It's my privilege to join you today to discuss SBA's Historically Underutilized Business Zone—or *HUBZone*—Program. This program is unique among SBA's socioeconomic designations, as its purpose is to lift entire communities that have been passed over for economic development.

I'll discuss the specifics of the HUBZone Program momentarily, but first I'd like to tell you a little about myself.

I am the Managing Member of Schoonover & Moriarty LLC, an Olathe, Kansas-based law firm that counsels small business federal contractors. In my practice, I work with clients on a broad range of issues: from complying with the myriad of federal laws, regulations, and contractual provisions covering their work with the federal government; to complying with the U.S. Small Business Administration's small business and socioeconomic program regulations; and representing them in performance disputes and bid protests. I'm also a member of the Board of Directors for the HUBZone Contractors National Council.

My clients provide vital services and products that keep our government functioning. And, as I mentioned, they are almost exclusively small businesses. One of the best parts of my practice is that I see firsthand the benefits that small business federal contracting dollars generate: these business owners provide quality, stable jobs to employees, that generally allow freedom to remain involved in their communities. Without exception, each takes pride in the work they perform for the government.

My clients represent a true cross-section of America. Some are participants in SBA's 8(a) Business Development Program (which focuses on ensuring economic opportunities to those that have suffered economic and social disadvantage) or are service-disabled veteran-owned



small businesses or women-owned small businesses. Some of my clients are also HUBZone companies. And though today's hearing implicates these socioeconomic designations, I am not here to advocate on behalf of any particular client or organization.

While the 8(a), SDVOSB, and WOSB programs focus on providing economic development to companies based on their owners' qualifications, the HUBZone Program is unique in that it attempts to bring economic development to entire communities – or, as the Small Business Act calls them, “economically distressed areas.”<sup>1</sup> One such area is a “qualified census tract” – or any census tract where, under the most recent data, at least 50% of the households have an income that is less than 60% of the area's median gross income, or which has a poverty rate of at least 25%.<sup>2</sup> Other areas include qualified metropolitan counties, lands within the external boundaries of an Indian reservation, redesignated areas, base closure areas, qualified disaster areas, or areas requested by a governor to be included.<sup>3</sup>

If a small business has its principal office located in one of these HUBZone locations, and at least 35% of its employees live in a HUBZone, it may be certified as a HUBZone small business concern.<sup>4</sup> Though these requirements may sound straightforward, in my experience (and that of my clients) they can be anything but.

Regarding the principal office requirement, SBA's regulations contemplate a firm will have a brick-and-mortar location. The principal office, however, may not be the company's headquarters; rather, it is the office where the greatest number of a company's employees

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<sup>1</sup> 15 U.S.C. § 657a(a).

<sup>2</sup> 15 U.S.C. §§ 657a(b)(1), (b)(3)(A)(i); 26 U.S.C. § 42(d)(5)(B)(ii).

<sup>3</sup> 15 U.S.C. § 657a(b).

<sup>4</sup> 15 U.S.C. § 657a(d)(1); *see also* 13 C.F.R. § 126.200. I should note that there are important ownership requirements for a small business concern: in general, the business must be at least 51% owned by a United States citizen; or by an Alaska Native Corporation, Native Hawaiian Organization, or Indian tribe; or by a small agriculture cooperative to qualify.

work.<sup>5</sup> This definition can be especially tricky for services or construction companies, as the regulations exclude from the calculation those employees who work more than half their time at job sites – but, if *all* of a company’s employees work more than half time at job sites, that company definitionally cannot meet the principal office requirement (and, thus, is ineligible for the HUBZone program).

Meeting the 35% employee requirement remains the trickiest eligibility criterion. SBA’s regulations define an employee as any person who works for the concern at least 40 hours *per month*.<sup>6</sup> Of a company’s total number of employees, at least 35% must live in a HUBZone (meaning, they must have resided in the HUBZone for at least 180 days before the company’s certification).<sup>7</sup> Historically, the continuing eligibility requirements for the HUBZone Program essentially meant that companies had to ensure that they always remained in compliance with this requirement, lest they lose their eligibility for a HUBZone contract. This, of course, meant that companies were often spending too much time tracking their employees’ residency – taking their attention away from winning and performing contracts.

To SBA’s credit, it has acted within the last few years to ease the burdens associated with HUBZone compliance. Regarding the principal office requirement, SBA allows a building purchased or leased for ten years or more to be considered to remain in a HUBZone, even if the area’s designation later changes. This provides business owners assurance when deciding where to locate. Employees who continue to live in a HUBZone for 180 days after the company’s certification will continue to count towards the 35% requirement for as long as they remain continuously employed by the company, even if they later move out of a HUBZone.<sup>8</sup>

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<sup>5</sup> 13 C.F.R. § 126.103.

<sup>6</sup> 13 C.F.R. § 126.103.

<sup>7</sup> 13 C.F.R. § 126.200(d).

<sup>8</sup> 13 C.F.R. § 126.200(d)(3).

Finally, SBA has eased the continuing eligibility requirements to provide greater flexibility to HUBZone companies.

If a company meets the HUBZone requirements, it may receive certain benefits. HUBZone businesses may receive non-competitive awards valued at less than \$4.5 million, or \$7 million for manufacturing contracts.<sup>9</sup> There is also a 3% governmentwide prime contracting goal for HUBZone businesses.<sup>10</sup> But, unfortunately, awards to HUBZone companies have historically fallen short of this goal. SBA's latest data<sup>11</sup> shows that, when compared to the other socioeconomic program, HUBZone companies continue to get the short-end of the contracting stick:

| Prime Contracting Achievement:                |                  |           | 59.99%                         |
|-----------------------------------------------|------------------|-----------|--------------------------------|
|                                               | 2019 Achievement | 2020 Goal | 2020 Achievement <sup>12</sup> |
| Small Business                                | 26.50%           | 23.00%    | 26.02%<br>(\$145.7 B)          |
| Women Owned Small Business                    | 5.19%            | 5.00%     | 4.85%<br>(\$27.1 B)            |
| Small Disadvantaged Business                  | 10.29%           | 5.00%     | 10.54%<br>(\$59.0 B)           |
| Service Disabled Veteran Owned Small Business | 4.39%            | 3.00%     | 4.28%<br>(\$23.9 B)            |
| HUBZone                                       | 2.28%            | 3.00%     | 2.44%<br>(\$13.6 B)            |

I view the federal government's failure to meet its HUBZone contracting goals as indefensible. The point of the HUBZone program focuses on lifting entire communities through the influx of targeted dollars.<sup>12</sup> These communities are, definitionally, underutilized – when the federal government fails to meet its prime contract goals for HUBZone companies, it fails to help provide needed economic development to these areas.

Congress and SBA have recently taken several steps that have the possibility to help HUBZone companies receive a bigger piece of the contracting pie. A recent success includes

<sup>9</sup> 13 C.F.R. § 126.612.

<sup>10</sup> 15 U.S.C. § 644(g)(1)(A)(iii).

<sup>11</sup> 2020 data is available at <https://www.sba.gov/document/support-small-business-procurement-scorecard-overview> (last accessed July 8, 2022). Data for 2021 has not yet been published.

<sup>12</sup> 13 C.F.R. § 126.100.

President Biden signing the bipartisan PRICE Act<sup>13</sup> into law. Also, H.R. 190 (passed by the House in the 116<sup>th</sup> Congress) would help ensure greater opportunities for directed award to small business concerns. But still more work can be done. I'm honored to join today to discuss how the HUBZone Program might be improved.

Congress's efforts to improve the HUBZone program should focus on a single goal: encouraging the use of the program by federal agencies, to ensure contracting dollars impact the communities that need it the most. Here are some ideas:

- 1) **Compel certain agencies to prioritize HUBZone contract awards.** Perhaps the most impactful legislative change would be a mandate that certain federal agencies most connected to economic development—like the Department of Commerce or the Department of Housing and Urban Development—to prioritize contracting with HUBZone businesses. In 2006, Congress took this approach with the Department of Veterans Affairs and SDVOSB contracting, when it passed the Veterans Benefits, Healthcare, and Information Technology Act.<sup>14</sup> Thanks to that Act, whenever the VA solicits a contract, it must set that solicitation aside for SDVOSBs whenever it reasonably believes that two or more SDVOSBs will submit an offer at a fair and reasonable price.<sup>15</sup> In addition, the Act gives VA additional flexibility to issue non-competitive awards to veteran-owned entities.<sup>16</sup>

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<sup>13</sup> Pub. L. 117-88.

<sup>14</sup> Operative contracting provisions are now codified at 38 U.S.C. § 8127.

<sup>15</sup> 38 U.S.C. § 8127(d); *see also Kingdomware Techs., Inc. v. United States*, 579 U.S. 162 (2016) (interpreting the statute).

<sup>16</sup> 38 U.S.C. § 8127(c).

A similar requirement with a different federal agency could carry tremendous benefits to HUBZone companies. Whenever that agency seeks to issue a contract, it would first have to prioritize contracting with HUBZone entities – if two or more HUBZone companies exist that might reasonably submit an offer for the procurement, the agency should be compelled to set that work aside for HUBZone concerns. If not, the agency would have additional flexibility to issue a sole-source award to a particular HUBZone company. Only if those requirements aren't satisfied could that agency instead seek to contract with 8(a) companies, SDVOSBs, WOSBs, or other small businesses. In addition, agencies not subject to the mandate would retain their ability to contract with HUBZone entities. In this way, the priority afforded by this agency would increase the number of awards to HUBZone concerns.

- 2) **Adopt a “once HUBZone, always HUBZone” contracting rule.** Participants in SBA’s 8(a) Business Development Program receive tremendous contracting advantages. One such advantage guarantees that there’s never a shortage of work for 8(a) companies: under the “once 8(a), always 8(a)” rule, a follow-on solicitation to a contract awarded under the 8(a) Program must remain in the 8(a) Program, unless SBA specifically authorizes that follow-on procurement to be solicited under another program.<sup>17</sup>

Adopting a similar rule for HUBZone companies – “once HUBZone, always HUBZone” – will help ensure that work stays in the HUBZone program. Alternatively, changing the “once 8(a), always 8(a)” rule to “once 8(a), always 8(a) *or HUBZone*” would significantly increase the pool of work for which HUBZone companies might compete.

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<sup>17</sup> 13 C.F.R. § 124.504(d); FAR 19.815.

That is, according to SBA, approximately 10.5% of prime contract awards went to 8(a) companies in 2020; by 2025, President Biden has instructed agencies to issue at least 15% of prime contracts to 8(a) companies.<sup>18</sup> Naturally, however, the more contracts that are reserved for 8(a) businesses means that fewer contracts will be eligible for other socioeconomic programs (unless specifically released by SBA). Allowing HUBZone companies to compete for this same pot of contracts will help provide needed contracting opportunities.

- 3) **Expand the Highway Trust Fund to include HUBZone companies.** Presently, HUBZone small businesses are excluded from competing for opportunities funded under the Department of Transportation (DOT) Trust Fund, which is approximately \$2.3 billion dollars annually. Allowing HUBZone firms to compete would invest many of these dollars back into underutilized communities.
  
- 4) **Redefine the principal office requirement in the age of remote work.** COVID-19 has taught government and industry partners that they must be flexible to adapt to change. As part of this, we've seen both agencies and businesses recognize the possibility of remotely working—successfully. Many employees (and some employers) consider the possibility of remote work to be an important benefit. But by requiring HUBZone concerns to have a physical principal office, the HUBZone Program may threaten the eligibility of companies who allow their employees to work remotely.

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<sup>18</sup> See John Mattox, "Biden Administration Plans to Increase Contracting to Small Businesses," *GovConBrief.com* (Dec. 20, 2021), available at <https://govconbrief.com/biden-administration-plans-to-increase-contracting-to-small-businesses/> (last accessed July 8, 2022).

In the age of telework, rigid adherence to the principal office requirement may cause otherwise eligible businesses forego participating in the HUBZone Program or may otherwise cause otherwise qualified companies to lose a HUBZone contract. To be clear, the principal office requirement serves an important purpose: by requiring a HUBZone concern to have its principal office in a HUBZone, the government helps ensure that those areas receive economic development. But this isn't the only way to meet this important goal. Granting businesses who offer remote work to satisfy HUBZone eligibility requirements by, for example, having a higher percentage (say 50%) of its employees live in a HUBZone would still ensure that dollars reach these areas. In short, it's possible to change the principal office requirement to reflect today's reality while still honoring the intent of the HUBZone Program.

- 5) **Help small businesses through economic challenges.** Between the pandemic, supply chain difficulties, and, now, inflationary pressures, small businesses have been forced to cope with a tremendously difficult climate over the last three years. In many cases, small businesses perform under fixed-price contracts, often with potential periods of performance spanning five years (if not more). Given this reality, many businesses are now coping with higher costs that simply could not have been planned for when they first bid the project.

The federal government can help ease these pressures for all small businesses by requiring agencies to adjust the fixed contract prices where inflation exceeds a certain percentage, even if the contract does not include an economic price adjustment clause. Unfortunately, the federal government has been unwilling to negotiate any relief to

contractors – on May 25, 2002, in fact, the Department of Defense issued a memorandum instructed contracting officers to *not* equitably adjust fixed contract prices where a contractors costs increased due to inflation.<sup>19</sup> Essentially, the Department of Defense (and most other agencies) are forcing small businesses to bear these unanticipated costs.

This zero-sum game hurts every small business – but especially HUBZone concerns. Because the point of the Program is to increase economic opportunity in these areas, failing to adjust prices pinches these businesses (and their employees) which, in turn, causes fewer dollars to benefit these areas. Though the federal government can compel these businesses to perform at the contracted price, doing so only harms both parties. Instead, the government should *partner with* its small business contractors to ensure both parties receive the benefits of their relationship.

- 6) Empower SBA to enhance its support to the small business community.** Finally, Congress should increase the support it provides SBA, so that SBA can better meet its mission of supporting the small business community. From my vantage of working with small businesses, SBA is overworked and understaffed. Due in part to the success of their small business contracting programs, response times for contractors continue to increase. Additional funding will help ensure that small businesses receive support sooner and that small business contracts are awarded faster.

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<sup>19</sup> Office of the Undersecretary of Defense, “Guidance on Inflation and Economic Price Adjustments” (May 25, 2022), *available at* <https://www.acq.osd.mil/dpap/policy/policyvault/USA000999-22-DPC.pdf> (last accessed July 8, 2022).



Thank you for the opportunity to testify today. With this background, I am happy to answer any questions and look forward to working with the Committee on improving the HUBZone Program.



**Written Testimony of**

**Shirley Bailey**

**CEO and Managing Member, Summit Federal  
Services**

**Oakland, Maryland**

**On behalf of**

**HUBZone Contractors National Council**

**House Committee on Small Business Subcommittee on  
Contracting and Infrastructure**

**“A Review and Assessment of the SBA HUBZone  
Program”**

**July 14, 2022**

Chair Mfume, Ranking Member Salazar and Members of the Subcommittee, thank you for the opportunity to testify today.

My name is Shirley Bailey and I am CEO and Managing Member of Summit Federal Services, LLC, located in Oakland, Maryland. My company provides acquisition, business process, training, IT, administrative and security services to multiple federal agencies. We are an SBA-certified Historically Underutilized Business Zones (HUBZone) and woman-owned small business. I am also a member of the Women's Procurement Circle, which advocates for policies that strengthen women-owned companies that do business with the federal government.

I am testifying today on behalf of the HUBZone Contractors National Council, where I serve as the President and Chair of the Board of Directors. The Council is a non-profit trade association providing information and support for companies and professionals interested in the Small Business Administration's (SBA) HUBZone program. The Council strives to promote economic development in underutilized rural and urban communities, as well as maximize success for companies participating in the HUBZone program. The Council's membership includes HUBZone-certified small businesses, other small businesses, large businesses, and organizations interested in the HUBZone Program.

The HUBZone program is designed to provide economic assistance to underserved areas by awarding federal contracts to small businesses that operate and employ workers in those areas. The underlying principle behind the HUBZone program, established 25 years ago, remains the same today – to decrease unemployment and revitalize low-income communities by encouraging businesses to locate in these HUBZone areas. Congress, in its creation of the program, stated that the creation of new jobs in economically distressed areas presented a challenge to all levels of government. The HUBZone program was designed to incentivize businesses to locate in these areas, creating wealth creation through much needed jobs.

We thank the Committee for its continued commitment to support small businesses doing business with the Federal Government. It is because of this Committee's strong commitment to improving the HUBZone program that a substantial modernization effort was signed into law in 2018. This effort added stability to the program by changing the eligibility maps on 5 year intervals, redefining the income formula to increase the number of non-metropolitan areas as qualified HUBZones, adding a governor's petition, implementing an annual recertification, and increasing transparency through reporting. These changes have had many positive impacts on the HUBZone program. However, substantial challenges and barriers continue to plague certified HUBZone firms. Since the program's inception, the government has not met its goal to obligate 3 percent of eligible prime contract dollars to HUBZone small businesses. This represents over 25 years of missed opportunities and unawarded dollars for companies that operate and employ workers in HUBZones. To date, the HUBZone program is the only SBA contracting program where the government continually fails in meeting its established goal.

In the last 2 years, we have seen how crucial it is for government programs to adapt to changing realities, and the HUBZone program should be no exception. The workplace environment has dramatically shifted to embrace telework. Employers and employees alike cite significant cost savings and increased productivity. Although remote work provides substantial advantages and

cost savings for many companies, HUBZone companies must maintain a principal office in a HUBZone to be eligible to participate in the program. While SBA initially relaxed the eligibility requirement for the principal office during the pandemic, the eligibility requirement has been reinstated. This has required HUBZone certified businesses to maintain an office and ensure that their employees are spending the majority of their time in the office in order to maintain the HUBZone principal office eligibility. To account for the large percentage of contractor employees teleworking due to the COVID-19 pandemic, the Council recommends adding flexibility to the principal office requirement and embracing telework by allowing qualified HUBZone employees to count toward the principal office requirement if they are teleworking in a given HUBZone and/or provide an option to increase the HUBZone resident percentage in lieu of principal office.

Navigating business compliance during the pandemic has also been challenging. The shift for many to telework brought additional compliance risks for HUBZone companies, especially with the residency and workforce requirements. A continuing challenge is understanding compliance requirements, and we urge the SBA to provide clear guidance and a reasonable time period for companies to adapt to these regulatory changes.

We recommend the following actions to increase awards to HUBZone companies and the communities they serve:

**Apply the HUBZone Price Evaluation Preference to Task Orders.** The HUBZone price evaluation preference helps level the playing field for HUBZone firms in full-and-open competition, as well as affords federal agencies greater opportunity to devote federal spending to HUBZone firms. Regrettably, federal agencies have interpreted FAR 19.1304 as prohibiting the price evaluation preference to task orders when, in fact, it only prohibits commodities. We urge Congress to direct federal agencies to amend their interpretation to follow the law as Congress intended. As the federal government increasingly drives its spending through IDIQ contracts, such as the “Best in Class” (BIC) contracts, a significant opportunity for HUBZone spending is lost because the HUBZone price evaluation is not being applied in the award of task orders. The Council thanks this Committee for championing H.R. 5879, which passed the House on June 8. Applying the price preference would significantly benefit the SBA, federal agencies, HUBZone firms and the communities they serve.

**Expand Sole Source Contract Opportunities for HUBZone Companies.** As government buying continues to trend toward buying through large contracting vehicles and moving away from direct contracts, the ability for small companies to win sole source awards is more critical than ever. The Council supports eliminating option years for sole source contracts to allow for \$4.5/\$7.5 million each year, instead of over the life of the contract—as changed in House-passed H.R. 190 during the 116th Congress. The Council also believes that creating parity among SBA socioeconomic contracting programs, as it relates to sole source contracts, would incentivize agencies to increase their awards. A current impediment to awarding sole source contracts is the requirement that a contracting officer must show that they do not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns. There is confusion around the language “reasonable expectation,” which leaves this interpretation up to each contracting officer. This presents a barrier to awarding a sole source contract to a HUBZone company, as this could open the door to a protest – an action contracting officers seek to avoid.

Eliminating this requirement for the HUBZone, Women-Owned Small Business (WOSB)/Economically Disadvantaged Women-Owned Small Business (EDWOSB) and Service-Disabled Veteran-Owned Small Business (SDVOSB) programs would increase sole source awards to these socioeconomic categories. Additionally, SBA's Office of Government Contracting and Business Development (GCBDB) should develop guidance to provide clarity to the acquisition workforce on how to award sole source contracts to small businesses.

**Increase Acquisition Workforce Training of Small Business Contracting Programs.** Contracting officers have expressed the need for additional training on the HUBZone program and how to use it. Changes to the SBA's small business contracting programs have necessitated the need for recurring training on the requirements of the HUBZone program. The Council suggests creating a requirement for ongoing professional development and allocating funds to make this training possible.

**Expand Highway Trust Fund to Include HUBZone Small Businesses.** Presently, HUBZone small businesses are excluded from competing for opportunities funded under the Department of Transportation (DOT) Trust Fund, which is approximately \$2.3 billion dollars annually. Considering the recent Bipartisan Infrastructure Law, allowing HUBZone firms to compete would invest many of these dollars back into underutilized communities.

**Change Reporting Requirements to Accurately Reflect Contract Set-Asides.** Each year, SBA issues a procurement scorecard, which indicates how agencies performed in meeting their small business goals. The governmentwide goal of contracting with HUBZones is 3 percent. Despite this small number, the federal government has never met its goal – in FY2020, only 2.44 percent of prime contract dollars went to HUBZone certified businesses. The Council believes that even fewer contracts have gone to HUBZone businesses due to inaccurate reporting. Agencies often count the same dollar value towards multiple socioeconomic program goals, even though the contract was not explicitly set-aside for more than one program. For example, if a contract is set-aside for the WOSB program, and the winning company is also a certified HUBZone and SDVOSB, those contract dollars count toward the agency's goals in each of the 3 programs. This practice ultimately inflates the data reported on small business contracting awards. To increase transparency, the Council recommends agencies report progress toward small business goals based on how the contract was solicited. We applaud Representative Peters' proposed amendment to the FY2023 National Defense Authorization Act (NDAA) and urge the House to adopt it into the final bill.

**Revise the Definition of "Reside."** In the past, SBA has permitted firms to count employees that have lived in a HUBZone for less than 180 days if the employees can demonstrate an intent to live in the HUBZone indefinitely. This determination was made by the location in which the individual was registered to vote. Under the changes that took effect in December of 2019, the SBA removed this flexibility. The Council believes rescinding this change is overly restrictive, and recommends SBA revert to the previous definition of "reside." Since voter information is publicly available, this will also ease administrative burden on companies when providing proof of residency. Additionally, SBA should consider an alternative definition for college students and interns, given that their residency is often not year-round. Students are much-needed employees and are key to the success of HUBZone companies.

**Increase Utilization of Small Businesses to Counteract the Impact of Category Management.**

The Council continues to work to minimize negative impacts of category management on HUBZone certified businesses. These efforts resulted in a requirement in the FY2020 NDAA of annual reporting of small business participation on BIC vehicles, and governmentwide reforms issues by the Administration in December 2021. The Council remains dedicated to finding opportunities that ensure maximum participation of HUBZone businesses. We are encouraged by the guidance issued by the Office of Management and Budget (OMB) which directs agencies to consider the effect of category management and contract consolidation on small businesses and encourage the Committee to hold OMB accountable to take these actions. We also applaud Representative Fitzgerald's proposed amendment to the FY2023 NDAA to exempt certain contracts from category management requirements and urge the House to adopt it into the final bill.

**Redefine the Attempt to Maintain Requirement.** The HUBZone program has a requirement that 35 percent of all employees must reside in a HUBZone area. While all HUBZone companies should strive to meet the 35 percent requirement, only companies performing on a HUBZone prime contract currently benefit from the flexibility under the "attempt to maintain" residency requirement level. The Council believes that if the attempt to maintain requirement was redefined to include all contracts under which the federal agencies and large prime contractors are claiming HUBZone credit, more firms would be able to maintain compliance – largely benefitting the program.

**Prioritize Local Vendors.** As mentioned earlier in my testimony, generating wealth in underserved communities is an important mission of the HUBZone program. We believe the program would be enhanced by an emphasis on using local businesses to perform government contract work in the area of the award. We note that Congressman Andy Kim has introduced H.R. 4321, the "Put Our Neighbors To Work Act," which prioritizes using businesses within 60 miles of a military construction project. Similarly, the RISE Act sets a precedent by requiring a contracting preference for small businesses located in disaster areas. We encourage Congress to consider prioritizing local contractors for this program.

**Align the Rulemaking Processes of SBA and the FAR Council.** Pervasive inconsistencies exist in government contracting due to discrepancies between final rules issued by the SBA and the Federal Acquisition Regulatory (FAR) Council. This causes confusion for both companies and federal agencies on which guidance they should ultimately follow. Many in the acquisition workforce do not follow changes in small business rules unless it is in the FAR, despite that final rulemaking by SBA is sufficient. In addition, the time lapse between FAR Council action and final rules promulgated by the SBA can span many years. To remedy this problem, the Council suggests requiring the FAR Council issue its rulemaking simultaneously with SBA.

In conclusion, the HUBZone Program is needed now more than ever, as the number of HUBZone locations around the country have roughly doubled since Congress first created the program more than 25 years ago. The HUBZone contractor community is optimistic that the Congressional actions to provide more certainty, flexibility, and fair requirements for the program will help it fulfill its promise for more federal agencies, prime contractors, and HUBZone communities across the country. Our member companies and all HUBZone certified firms are ready to compete on

federal contracts to bring jobs, innovation, training, and economic empowerment to HUBZones. Thank you for allowing the HUBZone Council to testify at this very important hearing. I look forward to answering any questions.



**Testimony of Inés Rivas-Hutchins  
President, INTEC Group, LLC  
Paducah, Kentucky**

**U.S. House of Representatives  
Committee on Small Business  
Subcommittee on Contracting and Infrastructure**

**Hearing on  
"Review and Assessment of the SBA HUBZone Program"  
July 14, 2022**

Good morning, Chairman Mfume, Ranking Member Salazar, and Members of the Committee.

Thank you for the opportunity to testify today. As a small businesswoman and member of Women Construction Owners and Executives (WCOE), I commend your commitment to programs ensuring that all categories of business owners through-out the nation have an opportunity to succeed.

The Congressionally authorized Historically Underutilized Business Zones (HUBZone) program was designed to address unemployment and underemployment and to create economic benefit for communities where good jobs are scarce. The program set up opportunities for small businesses in those areas by creating a federal marketplace with set-asides, sole-source awards and price preferences. For the record, the HUBZone set-aside program provides another needed avenue for women-owned construction companies seeking federal contracts. For firms in rural areas or other underutilized areas, this can be especially beneficial. Women-owned construction firms continue to be underutilized in the federal marketplace. Unfortunately, women continue to face discrimination in the bid process both in the private and the public sector. I should emphasize that, in general, the ability to fully and fairly compete for federal contracts is critical because winning a federal contract award is a powerful tool and can propel a business forward.

#### **Introduction**

I am Inés Rivas-Hutchins, Founder and President of INTEC Group, LLC. I am pleased today to also be representing WCOE, a national trade association representing the interests of women owners and executives in the construction industry. WCOE was founded in 1984 and has continued to be the voice of women business owners in the construction industry for 38 years.



We have worked to create fairer procurement processes so that female owners in the construction industry will have greater opportunities for success.

WCOE members from across the nation work in a wide variety of construction industry occupations and our firms include both union and nonunion companies. Members include a rebar/highway contractor in Illinois, a general contractor who performed the landscape revitalization for the Statue of Liberty, a steel supplier for major federal projects from California, the owner of an electrical company in California, a trucking company owner from Missouri, and many more, including women who own construction-related professional service businesses. WCOE members hold a variety of different certifications: small business, WOSB, EDWOSB, DBE, MBE, EDWBE, and HUBZone certifications. As a group, WCOE focuses on helping women-owned businesses – and women executives – succeed in the construction industry.

#### **My Company and Experience with HUBZone**

INTEC Group, LLC is an Economically Disadvantaged Woman-Owned Small Business (EDWOSB), SBA 8(a) program participant, and an SBA certified HUBZone firm in the state of Kentucky that specializes in all aspects of general construction. INTEC Group has a successful history of providing quality products and services to the federal government, including the U.S. Department of the Army the U.S. Air Force, and the Army Corps of Engineers.

As an owner in a rural area, I am pleased to have the opportunity to unlock the amazing potential inside people. INTEC invests in our people through training and leadership development and encourages employees to develop their skills and talents. The HUBZone program allows us to be positive contributors to our community and to give our workers the opportunity to develop and provide for their families. HUBZone evens the playing field for us. We're a local company, and we work directly for our community. Bringing those federal dollars back to our community using local talent is a big reason why we maintain this designation. Beyond that, it's no secret there's a talent shortage in the industry. We need all the people we can get. HUBZone ensures there's an incentive for educated STEM graduates to stay in Kentucky. We want them here where they grew up. We want to have a job for them, and not have them move to big cities.

I came to the United States from Venezuela 23 years ago with a background in Architecture studies, but I soon fell in love with the boots on the ground aspect of the construction industry. Managing projects became my passion. I worked my way up in this industry from Construction Operations Manager to Project Manager, to Company owner. I started my own company in 2015, capitalizing on the knowledge gained and connections made throughout my career. INTEC Group has been an 8(a) certified contractor for two years and a HUBZone certified contractor for five years. Although being a Women-Owned Small Business (WOSB) company since the inception, the majority of my federal work has been through the HUBZone program maximizing my company's opportunity for growth. Back in 2017, I was watching for a replacement MATOC contract that in the past had been Small Business set-aside. To my

surprise, the Solicitation was issued HUBZone set-aside instead, which propelled me to do my due diligence and get INTEC Group HUBZone certified. I'm proud to list many important projects in my portfolio, including HUBZone projects such as, Design/Build Pratt Museum Renovation, Re-Purposing the Soldier Readiness Program building, Fort Campbell, Kentucky, Design/Build Range 28, Fort Campbell, Kentucky, Tyndall AFB Demolition Phase II, Tyndall AFB, Florida. My contracts have ranged from \$100,000 to \$10 million.

INTEC Group has been awarded to-date a total of 225 contracts/task orders in the order of \$151 million, of which 121 awards were HUBZone set asides for approximately \$78 million. It is fair to say, that the HUBZone certification accounts for over 50% of my company's revenue.

All federal programs have a certain amount of red tape but keeping up with HUBZone ever-changing landscape does require extra due diligence due to map changes, office location requirements, and the 35 percent employee residency requirement. Not every small business firm can easily comply or keep up with the HUBZone program changes and it is important to note that recent changes have eased compliance.

**Key Points about the HUBZone Program:**

**HUBZone Maps:** HUBZone eligibility is dependent on where a business is located and where its workers live. The SBA relies on Census tracts to determine if a particular business and its workers are located in low income, underutilized, and underdeveloped areas. Census tracts change over time, and as such the HUBZone designated areas and "maps" have been a moving target. SBA has made some changes which benefit local areas and HUBZone contractors.

- Increasing to five years the HUBZone designation map is helpful because businesses like predictability.
- Extending HUBZone eligibility for BRAC base closure areas from five-years to eight years also gives added predictability.
- Allowing certified firms to be considered a HUBZone small business throughout the life of a contract helps those that have temporarily lost employee(s) and are making good faith efforts to maintain the HUBZone resident requirements.
- Allowing governors to designate HUBZone areas will be beneficial and will allow more designations for rural communities to take advantage of the program. However, it is not yet clear how well it will work. The authority was included in the 2018 National Defense Authorization Act (NDAA) and the first state to receive approval for a request was in 2021. So, I'm not aware if Kentucky has requested new governor-designated areas or not.
- Freezing the HUBZone maps through June 30, 2023, because of the lateness of census data will help avoid confusion.

- In my area, one side of the street is in a HUBZone but the other side of the street is not in the HUBZone! Maybe allowing businesses to ask for a waiver in such circumstances is warranted or perhaps a Governor could address that under his or her new authority.

**Flexibility in employee percentage and office location:**

WCOE is very mindful of the potential for fraud and abuse in certification requirements and in program implementation. (WCOE long supported eliminating self-certification in the WOSB program and is pleased to see SBA is moving forward with implementation of the 2015 NDAA law.) WCOE wants all programs, including HUBZone, to be vigilant about fraud. Still, legitimate companies doing their best to follow HUBZone rules need some flexibility.

**Office Location:** To become certified, firms must maintain a principal office located in the HUBZone. This is made more difficult as HUBZone map lines change. I recently made a significant investment to set up an office and relocation would be costly for my firm, so new long-term investment rules for the main office location helps me and other companies that want to remain in the program but can't afford a move because of a map re-designation.

In another effort to deter fraud, the SBA implements a random site visitation program to validate the geographic location of principal offices. Before the pandemic, my company did have a site visit from an SBA district field official. My staff and I found the SBA staff to be professional and cordial during the visit, and my relationship with my SBA Business Development Specialist was in fact stronger and better after her personal visit to my office. It was not intrusive and is a good investment to keep a check on companies that might want to game the system and WCOE would recommend it continue.

**Residency Requirement:** The HUBZone program has a requirement that 35 percent of all employees must reside in the HUBZone area. The employee residency requirement is important to the mission of the program, but employers cannot control when their employees move or leave the company unexpectedly. I recently had an employee quit and that employee was not easily replaceable. I was concerned about the employee percentage – in a small company, one employee can make a difference! SBA must continue to balance employers' need for flexibility with the program's residency requirement such as the new "Legacy" HUBZone employee provision, allowing businesses to count long-term employees as permanent HUBZone residents.

**Pandemic concessions:** During the pandemic, the SBA made important adjustments addressing changes in workforce arrangements. Firms participating in the 8(a) program for example, were granted an automatic one-year program extension. Going forward, SBA should embrace telework by allowing employees to count toward the principal office requirement if they are teleworking in a HUBZone and report to the principal office.

**Certification:** The federal government awarded almost \$14 billion to HUBZone certified businesses in 2020. WCOE does believe that SBA should make every effort to reduce applicant

fraud and assure that only legitimate and eligible firms benefit from HUBZone contracts. The one-year recertification allowed by SBA is helpful but WCOE supports full documentation review every three-years as another way to reduce fraud and abuse in the program. While WCOE supports strong certification requirements and properly vetted documentation, it also believes technical assistant programs are important to get more women-owned construction businesses into the program.

Not every HUBZone certified contractor in WCOE has had the same experience in acquiring its certification. For me, HUBZone certification was not a difficult process. It was easier for me because of my experience in going through the certification process for other programs and having staff to work through the process while I run my business. For new applicants though, I can see it could be daunting. The average HUBZone firm has approximately 4 employees. Such a company without experience with federal certification programs and without staff dedicated to follow the process, the website, the documentation, and the uploading of documents can be tedious and time-consuming. However, in my opinion, the SBA does a good job of providing support for applicants and SBA has decreased the time it takes to process HUBZone applications.

#### **Building and Expanding HUBZone Contract Utilization**

**Marketing Campaign:** More effort needs to go into awareness and education about the HUBZone program. Although, I have had success in the HUBZone program, statistics show not enough of the contracts have been set-aside for HUBZone certified firms. Contracting officers say they are unable to find enough qualified firms to set-aside contracts. On the other hand, HUBZone companies within WCOE have indicated they have a hard time finding contracts. So, more marketing and education for contracting officers, for businesses, and now to Governors regarding their ability to expand the map in their states, would benefit the program.

WCOE's experience has been that in construction most have no idea what a HUBZone is – that includes potential end-users and contractors alike. Some 834 of the nation's 3,242 counties, have HUBZone status and that number is likely to increase. More needs to be done to increase the interest by small business contractors to apply for HUBZone certification. A stronger education and marketing effort will help that happen.

**Incentives for Meeting Goals:** Simply producing an agency scorecard, *the SBA Procurement Scorecard*, for Congressional and public review, has not achieved the desired results. **There has been a hesitancy to set goals higher for set-aside programs but in New York state, for example, when the goals were set higher for the state WOSB program, the number of contract awards increased.** (See Scott Stringer's 2017 report, *Making the Grade: NYC Agency Report Card on Minority- and Women-owned Business Enterprises*.) Higher goals, with more contracts available would encourage more small businesses to certify and expand the number of potential bidders for federal contracts. The Biden Administration has recently set higher goals for some programs but delayed increasing goals for others but all programs would benefit

from higher goals, especially if there were stronger marketing and agency incentives for meeting goals.

WCOE firmly believes that **agency or contracting officer incentives to meet goals would be helpful, especially if there are no consequences for never meeting goals.** More education about meeting the goals and more communication about who in an agency is responsible for meeting the goals would help. The DOT has an excellent record with its DBE program that could be adapted and modeled.

**Reform the Procurement Scorecard:** WCOE has long advocated for changes and more transparency for the SBA Procurement Scorecard, which “scores” how well agencies performed in meeting their small business goals. The federal government goal for HUBZone contracting is only three percent, yet the federal government has never met its goal. So, the *Scorecard* alone has not been an effective tool in encouraging agency participation.

SBA allows agencies to double or triple count contract awards. As it stands, one contract can be counted for multiple programs. A contract award to a woman-owned HUBZone contractor who is also a veteran can count toward three different program goals, making the Procurement Scores look higher than they actually are.

WCOE has also advocated for more transparency in the Scorecard on dollar amounts awarded. The Scorecard should include how many awards are made along with the value of contracts awarded by each agency. This would give a more complete picture of which agencies have energetic outreach. The scorecard should reveal if it is one company that was awarded a million-dollar contract or if 40 companies received \$25,000 contracts.

**Subcontracting Plan Compliance:** For WCOE companies, subcontracting is an important way and sometimes the only way to enter the federal marketplace. It allows construction companies to build a positive past performance record. With the advent of category management, subcontracting is more important than ever. As with agencies, there is no incentive for meeting or consequences for failure to meet subcontracting goals.

**Category Management/Multiple Award Contracts:** As the federal government is looking for ways to save money, it has turned to “category management” – and contracting officers are feeling pressured to use the process. That effort shrinks bid opportunities for small businesses. Those most hurt will be those companies trying to break into the federal space. For many women-owned construction companies, federal contracts are a powerful tool for growing their business.

On this issue, Congressional oversight is extremely important because small businesses across all categories need to have fair access to federal contracts and subcontracts. Increasing the awards for sole source contracts should be considered for HUBZone contractors to help balance out that trend to category management and Multiple Award Contracts (MACs) need to ensure continued opportunities for all disadvantaged businesses.

**Expand Sole Source Contract Opportunities for HUBZone and WOSB Companies:** A current impediment to awarding sole source contracts is the requirement that a contracting officer must show that they do not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns. There is confusion around the language “reasonable expectation,” which leaves this interpretation up to each contracting officer. This presents a barrier to awarding a sole source contract to a HUBZone company, as this could open the door to a protest – an action contracting officers seek to avoid. Eliminating this requirement for the HUBZone, WOSB/EDWOSB and SDVOSB programs would increase these awards to small businesses. Additionally, SBA’s Office of Government Contracting and Business Development (GCBD) should develop guidance to clarify how the acquisition workforce can award sole source contracts to small businesses.

#### **Conclusion**

Thank you again for your focus on the HUBZone program. Like all the programs designed to help small businesses, the need remains, not just for fairness in the federal government contracting program but for creation of needed jobs in depressed and rural areas.

Thank you and I am happy to answer any questions.



Testimony of

Brent A. Lillard

CEO  
GovSmart, Inc.

House Committee on Small Business  
Subcommittee on Contracting and Infrastructure

“Concerns and Recommendations  
for Improvement of the  
HUBZone Small Business Program”

July 14, 2022

Chairman Mfume, Ranking Member Salazar, and Members of the Committee, thank you for the opportunity to testify before you today. My name is Brent Lillard, and I am the CEO and co-founder of GovSmart, Inc., an Information Technology Value-Added Reseller and HUBZone Small Business concern. In late 2009, my business partner, Hamza Durrani, and I started the company out of our kitchen in a rented house in the HUBZone of Charlottesville, VA. Today GovSmart has successfully completed over \$1 billion dollars in Federal prime contracts and hundreds of millions of dollars in Federal subcontracts. We currently have 72 full-time employees, and we continue to grow along with the Federal Government's HUBZone requirements. We are members of GovEvolve, the leading advocacy organization for small and midsize businesses that support government innovation. GovEvolve is committed to positive change for companies like ours that sometimes struggle under small business policies, and we are grateful for Madison Services Group's efforts in managing GovEvolve's policy priorities to bring our industry's concerns before you today.

As a thirteen-year HUBZone program member, I have observed the strengths and weaknesses of this program firsthand. I believe it can serve a crucial role in reaching underserved communities, like that of the Rose Hill neighborhood in Charlottesville, VA where our company's headquarters is located. I also believe the program has some endemic challenges that need to be addressed to maximize its reach. I further believe the HUBZone program is engaged in an unanticipated competition for Federal contracts with other highly-valued socioeconomic programs – and I believe it is currently losing that competition.

Today I will cover some of the challenges to success that I believe are endemic to the HUBZone program's structure and offer some ways the program can be improved to better serve those in our community who cannot currently benefit from the HUBZone program. I will also discuss some of the procurement-specific issues that have led the HUBZone program to historically underperform, and some ways I believe this Committee can address those issues. Finally, I will discuss some issues facing all Small Businesses who are also in the information technology industry.

### **I. Difficulty Hiring HUBZone Residents**

The HUBZone program was set up in 1977 with the passage of what became 15 U.S.C. § 657a with the intent of directing federal contracting dollars into areas where the residents experienced at least 25% poverty based on census numbers.<sup>1</sup> The method envisioned by the program was to certify HUBZone-qualified companies that commit to maintaining a workforce comprised of at least 35% HUBZone residents, with the hope that those employees would earn enough to throw off the burden of historical poverty and re-invest their wages into their communities to benefit the whole area.<sup>2</sup> The reality of how this program works in real communities is far more complicated.

In my experience, it has been very difficult to maintain 35% HUBZone residency for our employees due in part to the economic realities faced by our neighbors here in Rose Hill and other HUBZone locations in our city. Many of these residents qualify for and receive public assistance

<sup>1</sup> See 26 U.S.C. § 42(d)(5)(B)(ii) (2020).

<sup>2</sup> See e.g. S. 208, The HUBZone Act of 1997: Hearing Before the Senate Comm. on Small Bus., 105th Cong., 1st Sess. 1-3 (April 10, 1997).



in the form of unemployment, food stamps, access to affordable housing, and other programs on which they have come to rely. After starting work with our company, many of these employees realized they would become ineligible for the public assistance to which they were accustomed. The GovSmart entry-level salary exceeded the maximum they could earn without losing such benefits. Faced with the economic conundrum that their earned wages did not significantly exceed their public assistance, they resigned from employment. In some cases, and as recently as last month, employees requested fewer hours than were available to keep from exceeding the public assistance thresholds. Many of the new employees left demoralized and convinced that employment with our company was not the saving grace they expected. Even our best efforts to retain employees – which include generous time off policies, a practically unlimited fully-stocked kitchen, very competitive compensation plans, and even dedicated prayer rooms – could not overcome this simple economic analysis.

Difficulty in hiring HUBZone residents has long been recognized by the HUBZone Program, and the SBA's new shift towards allowing "legacy" employees has helped tremendously.<sup>3</sup> Additionally, the ability for a firm to earnestly attempt to hire and retain HUBZone residents as employees without losing its program eligibility have softened the impact for firms that do not meet the requirement. However, the 35% requirement remains the baseline, and firms like GovSmart struggle to both attract new employees and stay compliant with the program.

One thing to consider is whether the HUBZone designation of the individual's residence is the only effective metric for identifying those suffering from economic hardship. In our city alone, we have seen struggling individuals who live below the poverty line and would make acceptable employees, but they do not live inside of HUBZone. We cannot hire them without risking the loss of our HUBZone status. To address this, we recommend the HUBZone program relax the residency requirement to include any member of the community that falls below the poverty line, regardless of whether they live in the HUBZone. This should also include those who currently lack a permanent residence at all.

## **II. Government Failure to Meet HUBZone Goals**

SBA HUBZone program participants expect to receive at least 3% of all Federal contracting dollars based on Congressional requirements in 15 U.S.C. § 644(g)(1)(A)(iii). This is the incentive for companies to become involved in the program. However, most agencies do not meet their HUBZone goals. In 2020, the Federal Government's Small Business Procurement Scorecard revealed that it only awarded 2.44% of procurement funds to HUBZone companies, short an amount equivalent to more than \$3 billion dollars.<sup>4</sup> The percentage awarded to HUBZone companies in 2020 was highest of the last five years, during which the average HUBZone percentage was only 2.02%.<sup>5</sup>

<sup>3</sup> See Small Business HUBZone Program and Government Contracting Programs, 84 Fed. Reg. 6522 (Nov. 26, 2019).

<sup>4</sup> The SBA records the amount of total contract dollars eligible for Small Business set-aside contracts for FY2020 as \$560 billion. By awarding only 2.44% of such funds to HUBZone firms leaves a shortage of 0.56%, or \$3.136 billion. See FY2020 Government-Wide Scorecard Summary available at <https://www.sba.gov/document/support-small-business-procurement-scorecard-overview>.

<sup>5</sup> We believe the increase in 2020 is at least partially attributable to the SBA's changes to the HUBZone program in 2019 (see FN3 above).

During each of these years, the government-wide scorecards received a grade of “A,” indicating that in each year the overall contract dollars awarded to small businesses of any designation exceeded 100% of the Congressionally required amount. This result comes even though billions in funds intended for HUBZone companies were redirected to other small business programs. This disparity – receiving an “A” grade while underperforming in HUBZone awards every single year since 2007<sup>6</sup>– comes from the SBA’s scorecard analysis algorithm, which allows extra credit to make up for shortfalls in one socioeconomic program by overachieving in other programs.

For the past 5 years the Federal Government nearly doubled its requirement for Small Disadvantaged Businesses (SDBs) each year. Despite a 5% goal for awards to SDBs, the government-wide scorecard shows an average achievement of 9.8%.<sup>7</sup> This indicates that something in the procurement system has skewed procurement dollars in one direction over another.

### **III. Program Rule Changes Not Following the Administrative Procedure Act**

One major complexity experienced by HUBZone companies lies with the ever-evolving standards for eligibility that are often changed outside the requirements of the Administrative Procedure Act.<sup>8</sup> It has become common SBA practice to announce substantive changes to material rules by updating the Agency’s Frequently Asked Questions (FAQ) page, rather than publishing such rule changes in the Federal Register, evaluating comments from affected parties, and then issuing final rules.<sup>9</sup>

An example of this concerns the SBA’s welcome change adding HUBZone “legacy” employees to the roles of qualified HUBZone residents for the purpose of meeting the 35% residency requirement. The rationale for this change is strong and appropriate: HUBZone residents who work hard and earn sufficient funds to move out of a HUBZone area should not then count against the HUBZone firm that yielded them the opportunity to improve their lives. The new rule allowed HUBZone companies to count any employee that qualified as a HUBZone resident in the past, but later moved out of the HUBZone, towards that company’s 35% requirement. As announced in the Federal Register, this rule became final on December 29, 2019.

After the new rule was announced, and out of an abundance of caution, GovSmart contacted the SBA’s HUBZone Program office and specifically asked whether legacy employees would count regardless of how long ago they lived in the HUBZone, so long as they qualified as a resident per the SBA’s residence rules at the time. GovSmart was advised in writing that employees who met the residence requirements as of any previous certification or recertification date would be allowed

<sup>6</sup> The SBA publishes scorecards only back to 2007 on its website (see FN4 above).

<sup>7</sup> The SBA records SDB awards for the years of 2016-2020 of 9.53%, 9.10%, 9.65%, 10.29%, and 10.54% respectively.

<sup>8</sup> 5 U.S.C. § 553 (2021).

<sup>9</sup> For the relevant F.A.Q., see <https://www.sba.gov/brand/assets/sba/resource-partners/hubzone-program-improvements-faq-508.pdf>.

to count as legacy HUBZone residents. On that advice, we were able to hire additional staff and continue growing – but always staying within the 35% requirement.

However, in an update to the SBA's Frequently Asked Questions (FAQ) published on June 24, 2021, the SBA included a rather earth-shattering qualification that employees must have established their "legacy" residence within the HUBZone only after December 29, 2019 – the date the rule became final. This change was not made pursuant to the Administrative Procedure Act, and was not publicized beyond the FAQ update. Nevertheless, the consequences of that change are profound. Companies relying on pre-2019 legacy HUBZone residents may find themselves outside the requirement through no fault of their own. Such companies must take drastic and immediate measures to ensure program compliance. By far the quickest path to compliance for most companies facing this issue is to fire as many non-HUBZone employees as necessary to ensure the remaining personnel meet the 35% program requirement.

This ad-hoc rulemaking process of introducing substantive policy changes, sometimes contrary to previously-issued legal advice on which companies like GovSmart were led to rely, makes compliance with HUBZone Program rules very difficult. The overall effect of this process is to keep HUBZone companies in constant apprehension of running afoul of rules that may change at any time. I respectfully request this Committee take steps to ensure the SBA conforms to the established procedures mandated by the Administrative Procedure Act and halt the process of changing substantive rules announced only in FAQ documents.

#### **IV. Procurement Policy Challenges to HUBZone Success – Parity with the 8(a) Program**

The clear explanation for why agencies are drastically over-performing when it comes to Small Disadvantaged Business (SDB) awards comes down to administrative efficiency. It is much faster and easier for a contracting officer to complete an SDB direct-award contract than it is to hold a competition, evaluate proposals, select a contractor, and handle any resulting bid protests that may arise. In a fraction of the time it takes to complete a competitive HUBZone contract, the agency can issue a direct-award to an 8(a)/SDB. The agency will avoid the time constraint of a price competition and be completely immune from vendor protests, as such awards are only reviewed by the Government Accountability Office (GAO) in very narrow circumstances, such as bad faith or violation of procurement rules.<sup>10</sup>

Under the SBA's 8(a) direct award authority, a Government agency may award contracts without providing for the competition otherwise required by the Competition in Contracting Act.<sup>11</sup> Provided that Agency procurement officials establish a firm's eligibility and reasonable price, they can award a contract to meet Agency needs in a fraction of the time it takes to procure the same good or service from a HUBZone firm.<sup>12</sup> Before a contracting officer can issue a direct award to a HUBZone firm, that contracting officer must establish that only one HUBZone is likely to be capable of contract performance – something almost never true given the field of HUBZone firms that compete for these contracts.

<sup>10</sup> See, e.g., Matter of MCB Lighting & Electrical, B-406703 (July 13, 2012).

<sup>11</sup> 41 U.S.C. 3301 (2020).

<sup>12</sup> 48 C.F.R. § 19.800 (2020).

GovSmart was also an SDB under the SBA's 8(a) Business Development Program during our first years. During our years as an 8(a) SDB, we benefitted from this program and received many direct awards. We were nevertheless aware that the HUBZone status that we concurrently held was a distant second in terms of business growth and development. When we graduated early from the 8(a) program in 2019, we had already transitioned to lean primarily on our HUBZone status, and we survived the loss of the direct awards. Now we struggle to make the case to Government agencies for why they ought to set a given procurement aside for HUBZones. They know, as we do, that the lack of direct award authority means a lack of efficiency.

This explains one major component of the disparity between the abundance of contract dollars awarded to SDBs and the annual failure of the Government to even reach the HUBZone minimums. To correct this disparity, I respectfully request that this Committee consider advocating for parity amongst the programs. The direct-award authority now benefiting only SDBs should be extended to all of the other programs or ended all together. Another option would be for the direct-award authority to only be granted when an agency is behind on their goals in a certain area. This change could be made by adjusting the language in the current HUBZone direct award authority to remove the requirement that procurement officials compete any requirement when more than one HUBZone is likely to supply a bid.<sup>13</sup>

#### **V. The Need for a Dedicated Industry Code**

GovSmart is a reseller of information technology goods and services. We perform a critical function for the Government as an interface with the expertise and connections to assess a Government technology requirement and match that need to quality products or services offered by literally thousands of manufacturers. With our help, the agencies do not need to directly survey the universe of available solutions to a given tech problem – they can instead pose the requirement to us and our competitors, and with our amassed knowledge and experience, we can compete to recommend the best technology solution.

Resellers are not manufacturers, or, under most circumstances, direct service providers. We are more analogous to wholesalers, leveraging the benefits of volume and supplier relationships to provide prices to the government that are well below the manufacturer's suggested retail price (MSRP). We are also full-spectrum prime contractors with project management capability, ongoing customer support obligations, and expertise in architecting solutions that will meet our customer agency's needs.

The SBA currently prohibits the use of industry codes that are the most descriptive of our industry. For various reasons, including the need to track categories of government spending, the SBA requires us to classify ourselves as either manufacturers or service providers under the North American Industry Classification System, or NAICS, codes appropriate for those industries. For example, computer manufacturers are generally classified under NAICS code 334111, *Computer Device Manufacturing*. Computer service providers are generally classified under NAICS code

<sup>13</sup> 48 C.F.R. § 19.1306(a) currently reads in relevant part, "A contracting officer shall consider a contract award to a HUBZone small business concern on a sole source basis ... provided that . . . (1) The contracting officer does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns." Removing this requirement would place HUBZone small businesses on parity with 8(a) SDBs for direct awards.

541519, *Other Computer-Related Services*. By forcing resellers to classify themselves falsely as either manufacturers or service providers, all procurement dollars awarded to resellers can be used to capture overall government spending on supplies and services. However important the benefit of such data, or however difficult it may be to acquire otherwise, this system results in very serious harm to the very small businesses the SBA is chartered to shepherd.

If a reseller classifies itself as a manufacturer, it falls under the rules applicable to manufacturers, including size standards that are formulated to be relevant to companies engaged in manufacturing, not resale. These are generally employee-based size standards. For services companies, small businesses must not exceed a specified amount of annual revenue. As a reseller is not a manufacturer or a service provider, neither yardstick properly measures companies in our industry. The SBA has attempted to fix this issue by creating an exception within the 541519 NAICS code for Information Technology Value-Added Resellers (ITVARs), but this exception falls drastically short of an actual solution as it continues to deny the reality that resellers are primarily wholesalers and not service providers or manufacturers.

With an information technology reseller industry in the billions of dollars annually, this harm affects many companies and their employees. I respectfully request that this Committee consider taking steps to establish an industry-specific NAICS Code focused on information technology resellers that results from an honest evaluation of our industry. I would welcome the chance to discuss this issue more fully in a hearing focused on these NAICS codes, as I believe that is the only way to fully explore the complex consequences that follow from forcing the use of inaccurate codes.

#### **VI. Need to Re-Assess the Non-Manufacturer Rule**

The most troubling rule inherited from the misclassification of information technology resellers is known as the “Non-Manufacturer Rule” (NMR), which requires among other things that any small business reseller bidding on a contract set aside for small business be either the manufacturer of the goods it offers, or to supply only goods made by another small business.<sup>14</sup> At first glance, this statutory rule is important to support small business manufacturers against the encroachment of large businesses that could offer lower prices based on lower production costs, etc. As applied to resellers of normal commodities such as office chairs or military uniforms, this requirement makes intuitive sense – as does the possible penalties for violation. A violation of this rule carries with it a minimum fine of \$500,000 and potential debarment. One infraction could therefore be insurmountable for a small business. As applied to the information technology industry, the NMR has become increasingly irrelevant and dangerous to companies like GovSmart.

Information technology presents the greatest advantage – and the greatest risk – to government operations, and not just any product can be used on Government networks and to store or process Government data. Only the most well-built, heavily tested, and highly certified products meet current government standards. Accordingly, Government agencies can only buy these industry-leading products – nearly all of which are manufactured by large businesses. Few small business products can qualify under the ever-more-stringent cybersecurity and supply chain risk management regulations applicable to these products.

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<sup>14</sup> 15 U.S.C. 637(a)(17) (2020).

This leaves GovSmart in a lurch. Being subject to the nonmanufacturer rule, we must either manufacture the computers we sell or offer to sell computers manufactured by another small business. However, our customer can only purchase computers made by large businesses that can ensure their products are tested and certified as safe. The same concern applies to software manufactured by large businesses. Increasingly, small business resellers cannot comply with the nonmanufacturer rule and still provide the products the Government needs.

This issue has now been recognized by many Government agencies that are moving to address the problem. For example, the SBA itself issued in 2019 a waiver of the NMR with respect to laptop and tablet computers after research amassed by GovEvolve and Madison Services Group demonstrated conclusively that no small businesses make laptops and tablets in quality and quantities sufficient to supply the Federal market.<sup>15</sup> Two large Government Departments have now recognized the inherent problems with enforcing the NMR against IT resellers. These agencies sought and obtained from the SBA waivers of the NMR for their upcoming information technology government-wide acquisition contracts (GWACs) known as First Source III (DHS)<sup>16</sup> and Information Technology Enterprise Solutions – 4 Hardware (ITES-4H, Department of the Army).<sup>17</sup> Together, resellers like GovSmart will sell close to \$20 billion in information technology products to these agencies, but without the unnecessary threat of heavy fines and company-ending debarment.

These organizations have now formally recognized that the NMR should not be applied to information technology – including both hardware and software. I therefore respectfully request that this Committee take their lead by considering steps to formalize the exclusion of information technology procurements from the operation of the Non-Manufacturer Rule across all of Federal procurement. This would allow us to fulfill both our customer's needs and our duty to comply with all procurement laws, and would be a welcome change across the IT reseller industry.

#### **Conclusion.**

The HUBZone program is a valuable way to inject Federal procurement dollars into underserved communities. However, the program would benefit greatly from the changes recommended during today's testimony. These changes will help our company further benefit this community and its underserved areas. The addition of a new industry code focused on information technology resellers like GovSmart, and the removal of the Non-Manufacturer Rule will also help our company tremendously.

I have also attached a brief outline of additional issues important to us as a Small Business. Thank you for the opportunity to testify today, and I look forward to answering your questions.

<sup>15</sup> 85 Fed. Reg. 13692 (Mar. 9, 2020).

<sup>16</sup> DHS Solicitation # 70RTAC21R00000003, available at [www.sam.gov](http://www.sam.gov).

<sup>17</sup> Solicitation # W52P1J-20-R-0082, available at [www.sam.gov](http://www.sam.gov).

**Supplement:  
Challenges of being HUBZone Certified  
(vs. other socio-economic programs)**

1.) Difficult to scale with the 35%/50%+ eligibility requirement

**i. Difficult to hire inside of HUBZone because of the lack of available skilled labor**

1. When people become skilled, they make more money and move out of the HUBZone. This leaves mostly unskilled workers in the areas we must hire 35% of our workforce from.
2. Some potential employees are homeless or couch surfing to survive, and although they are below the poverty level, they do not qualify for HUBZone employment or possess the skills necessary to occupy one of the available job positions that do not require HUBZone residency.

**ii. Difficult to hire because potential employees lose government assistance**

1. New hires will potentially lose public assistance in the form of:
  - a. Unemployment
  - b. Supplemental Nutrition Assistance Program (formerly known as Food Stamps)
  - c. Access to Affordable Housing (section 8)
  - d. Child Care Services
  - e. Energy Assistance
  - f. Medicaid
  - g. Temporary Assistance for Needy Families
2. We have countless examples of people voluntarily terminating their employment when they realize that they must work full-time to pay the bills, and that so many of their government assistance programs end because of their employment.

**iii. Difficult to invest in building infrastructure**

1. HUBZone maps can change with the census at any time, without adequate warning, after a major long-term investment is already made in a property

- a. This forces HUBZone companies to always rent their office space (usually at a higher rate than the mortgage) or take massive financial risks by purchasing a property that may not be useful to them in the near future.
- b. This disincentivizes HUBZone employers to help transform the HUBZone into a zone with higher-opportunity and poverty rates below 25%.
- c. Being truly successful in the program is corporate suicide. The rules force the companies to move into a new HUBZone, leaving all of those gained jobs behind.

2.) Preference is given to 8(a) companies because of the Direct-Award rules

i. **Standard 8(a) companies receive direct-award contracts up to \$8M for hardware contracts, and Native 8(a) companies can receive direct-award contracts up to \$22M (Civilian) and \$100M (DOD) with no competition.**

- 1. 8(a) direct-award contracts cannot be protested. In most cases, HUBZone companies can't even see them. We are not considered an "interested party" by the Agency, GAO or CFC, and so we cannot successfully protest a solicitation or subsequent award to a competitor with an inferior solution or value.
- 2. 8(a) direct-award contracts are much faster to award because there is no competitive process.
- 3. 8(a) direct-award contracts can allow contracting personnel to effectively choose their brand of manufacturer while avoiding the standard process of having to write a "Justification and Approval" for that brand, and then having to get it approved by a Senior Procurement Executive, or higher.

ii. **Agency procurement scorecards allow up to 200% extra-credit for doubling the 8(a) goal, effectively raising the weighted performance to 20%.**

- 1. Agencies contracting shops have all figured out that they can use the other socio-economic programs and particularly the 8(a) program, which is easier/faster/less stressful, to meet and far exceed their shortfall of the HUBZone goal. See chart below:





### Calculating Prime Contracting Score

| Category                                                   | Category<br>Component<br>Achievement | / | Goal | = | Achievement<br>Score | X | Component<br>Weight | = | Weighted<br>Performance |
|------------------------------------------------------------|--------------------------------------|---|------|---|----------------------|---|---------------------|---|-------------------------|
| Small<br>Business                                          | 21.00%                               | / | 23%  | = | 91.3%                | x | 60.00%              | = | 54.78%                  |
| SDB                                                        | 10.50%                               | / | 5%   | = | 200.00%*             | x | 10.00%              | = | 20.00%                  |
| WOSB                                                       | 4.00%                                | / | 5%   | = | 80.00%               | x | 10.00%              | = | 8.00%                   |
| SDVODB                                                     | 3.50%                                | / | 3%   | = | 116.67%              | x | 10.00%              | = | 11.67%                  |
| HUBZone                                                    | 1.50%                                | / | 3%   | = | 50%                  | x | 10.00%              | = | 5.00%                   |
| Total Prime Contracting Weighted Performance (Prime Score) |                                      |   |      |   |                      |   |                     |   | 99.45%                  |

\*achievement score capped at 200.00%

- 3.) NAICS-related size-standards and FAR Non-Manufacturer-Rule are not being applied properly, and have a high potential and great financial incentive for abuse
- i. **Class-waivers/Individual Waivers to the NMR only recently applied to the HUBZone program at all.**
    1. This is one of the changes that positively impacted the goal achievement this year
  - ii. **Hybrid NAICS 541519 with VAR Exception is widely used incorrectly**
    1. The largest Government-Wide-Acquisition-Contract for IT products/services (SEWP V) received an exception for accidentally ignoring the Non-Manufacturer-Rule in the contract competition stage, making it possible for the industry to “get around” the requirements to provide items manufactured by a similarly situated entity.
  - iii. **Manufacturing NAICS 334111 and other 3-series NAICS codes are widely used incorrectly**
    1. There is no class-waiver for Desktop computers or Servers (and the laptops/tablets waiver only created very recently with the help of GovEvolve).
  - iv. **NAICS 423430 perfectly describes our industry but is not used anymore due to problems with classification of items purchased.**
    1. The “work-around” (using 541519) which is widely used, has the same problem attached to it, while creating even more problems along the way.

4.) Government-incentivized predatory bidding strategies benefit the largest “in the know” contractors, while leaving honest contractors (often small HUBZone companies) out in the cold

- i. We created an animated video to explain the problem.  
<https://www.youtube.com/watch?v=WkMMvTnYxfM>
- ii. Summary: Companies are highly incentivized to lie about their prices to score huge multi-billion-dollar Government-Wide-Acquisition-Contracts for commercial-off-the-shelf IT products, knowing full-well that they will never have to honor those prices. This is due to the length of the price competition and the inevitable release of new items that will replace the old ones by the time the contract goes live. This strategy is known by all the big players in the industry, and despite our best efforts to educate the contracting officers away from this by only evaluating pricing at the task-order-level, we are failing to get through. Even high-level Federal procurement attorneys have suggested that we do what everyone else does since there is no clearly defined rule against it, or metrics to evaluate it.

5.) Deal Registrations cause large businesses to profit more at the expense of Small Businesses

- i. Most major manufacturers have “Deal Registration” programs in place to incentivize being first to bring an opportunity to the manufacturer. The “registered” partner receives major discounts from ~15-90% off the standard reseller cost, causing a completely uneven playing field.
- ii. Large business resellers are usually the ones that the end users come to when deciding what to buy. By the time it gets to contracting and gets set-aside for a socio-economic program, the deal is already “registered.” This means that the small business prime contractor must now buy the products from the large business who is registered, or else pay a lot more for those products to go direct to the manufacturer. This almost always leads to the large business middle-man controlling all of the pricing, and keeping the lions share of the margin for themselves. It is more common than not for the small businesses to receive an RFQ directly from contracting, only to find out that a large business partner is registered. Common practice is for the small business to mark-up the products by 1%-3% when the large business has significantly higher margin (sometimes more than 10 times more margin than the small business). The chain usually looks like this:

**Manufacturer → Distributor → “Registered” Large Business → Small HUBZone Business → Government**

*\*Every tier has its own markup added on\**

### **Suggestions to help the HUBZone program achieve its goal:**

- 1.) Create parity in all socio-economic programs
  - a. Activate the SBA direct-award program in all socio-economic areas where the goal has not yet been met by the agency.
  - b. Require the same 5% of contracting dollars to go towards HUBZone and SDVOSB companies (just like SDB companies).
  - c. Do not allow extra-credit for using easier programs like the 8(a)/SDB program.
- 2.) Create more incentive for HUBZone residents to become gainfully employed
  - a. Slowly scale back on incentives to stay at home. Instead, funnel that money to the disadvantaged workers directly through their employers. This would supplement their income to offset their much higher training costs and would incentivize gainful, taxable, long-term employment.
- 3.) Grandfather the HUBZone principal office permanently
  - a. Helping to make the HUBZone prosperous should not be a corporate death sentence.
  - b. Moving to another HUBZone would leave a hole in opportunity. Corporate displacement is the downfall of many impoverished areas (Detroit, East St. Louis, etc.).
  - c. This will allow HUBZone companies to save money and invest in their community by purchasing building infrastructure without taking on a massive financial risk that they cannot control.
- 4.) Allow all potential employees under the poverty level to count as HUBZone
  - a. Homeless/Couch surfing candidates who cannot afford to pay for a house/room in the HUBZone should not be ineligible for this type of Federal help.
  - b. Grandfather them in so that employers are incentivized to permanently transform them into skilled workers.
- 5.) Permanently and retroactively grandfather employees who lived and worked in the HUBZone for a long period of time before the "Legacy" changes were made
  - a. The addition of the new rule for "legacy" employees was having a very positive impact on the way that HUBZone companies operate. It creates incentive to create skilled workers who eventually earn more money and can afford to live in a nicer home outside of the HUBZone. This policy should be completely

retroactive, to not unfairly punish companies who created prosperity amongst the HUBZone employees in the past. In our case, we have opened a case and received a letter from the Deputy Director of the HUBZone Program, stating that we were in compliance and that our old “legacy” employees count as HUBZone. Then without warning, the FAQ was updated to discontinue the retroactive nature of the rule. We only now discovered this while preparing this testimony and now our entire company is at risk.

6.) Bring back the NAICS code for IT Product Resellers (423430) and have a size standard of 150 employees

- a. The 423430 NAICS accurately describes the type of companies that receive these awards. Manufacturing NAICS codes are not appropriate because we are not manufactures and the size standards (1250 employees) make no sense for resellers. Services NAICS codes have revenue-based size standards that make no sense if you also sell IT-hardware in bulk at very slim margins.
- b. Currently the “work around” is to use NAICS 541519, which is a catch-all and has a 150-person size standard when using the VAR exception. The problem with this NAICS is that it requires 15%-50% services and this is usually fudged.
- c. This would solve the size standard issues, and allow small businesses and socio-economic companies to compete.

7.) End predatory pricing strategies by changing the way the proposals are evaluated

- a. Force agencies to do all price competitions at the task order level where the order will have to come to fruition. Outlaw arbitrary price competitions where bidders make up their price out of thin air to secure lucrative contracts over long periods of time.
- b. Provide active on-ramps for all multi-year-multiple-award Agency and Government-Wide-Acquisition-Contracts. This will allow smaller HUBZone companies to compete.

8.) Educate Contracting Personnel about “Deal Registrations”

- a. Contracting Officers need to understand Deal Registrations and how they negatively impact the companies who do not hear about the opportunity first.
- b. One solution is for the “market research” to be completed by a small HUBZone business/socio-economic potential awardee, so that they have an opportunity to hold the registration without having to “multi-tier it” by buying from a large business who buys it from the manufacturer directly.



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**July 21, 2022**

The Honorable Kweisi Mfume, Chairman  
Subcommittee on Contracting and Infrastructure  
Committee on Small Business  
2361 Rayburn House Office Building  
Washington, DC 20515-6315

Dear Chairman Mfume:

On behalf of Ho-Chunk Inc. (Ho-Chunk), I am pleased to submit this response to the hearing held on July 14, 2022, by the House Committee on Small Business, Subcommittee on Contracting and Infrastructure (Subcommittee) entitled "A Review and Assessment of the SBA HUBZone Program." The hearing focused on the Historically Underutilized Business Zone (HUBZone) Program that is administered and overseen by the Small Business Administration (SBA). Members of the Subcommittee heard testimony from stakeholders about how the program was working, its challenges and benefits, and what reforms they considered needed to be made to make the program more effective. We would like to thank you and other members of the Subcommittee for carefully considering the impact the SBA's HUBZone Program has had on small business. We would also like to expand on the information provided by the witnesses during the hearing and detail our thoughts on this important program which itself has been very "Underutilized" since its inception in 1997.

**Background:**

Ho-Chunk, Inc., is the parent company to tribally owned government contractor subsidiaries providing economic development to the Winnebago Tribe of Nebraska. As a parent company of small businesses supporting critical missions of various U.S. government customers, our goal is to provide quality services within our capabilities in federal contracting.

As sovereign nations that predate the United States, tribes retain inherent powers of self-governance and are responsible for providing for the well-being of our people. Despite the United States' treaty and trust responsibilities that are well established in federal law, Native peoples remain among the most underserved in this country.

Like other governments, tribal governments are responsible for the health and welfare of their tribal citizens. But relocation to remote areas of the Country, along with failed federal policies, led to disparate treatment of tribal governments and their citizens in areas such as healthcare, education, and home ownership. Removal and relocation left few opportunities for economic development.



According to 13 CFR 126.100, the purpose of the HUBZone program was to provide federal assistance for qualified Small Business Concerns located in historically underutilized business zones in an effort to increase employment opportunities, investment, and economic development in such areas. Those designated zones include lands located within the external boundaries of an Indian reservation.

As indicated during the Senate Committee on Small Business hearing on S. 208 in 1997, the bill was to “create jobs for those most in need and to stimulate investment in communities that need help the most”<sup>1</sup>, which included rural counties and Indian reservations, wherever there was high unemployment and poverty.

Indian reservations or Indian Country are included in these zones because there was, and still is, such a lack of economic development in those areas. This lack of job opportunity can be a major factor in creating poverty, unemployment, and other social issues that most tribal Nations face. Senator Conrad R. Burns from Montana spoke about including Indian reservations at that 1997 hearing stating “I think all you have to do is take one walk across reservations, as I do every time I go home, and you can see that we have got to do something to spur economic development on our reservations.”<sup>2</sup>

Senator Burns also differentiated between the 8(a) and the HUBZone programs in that “with HUBZones what we are trying to do is target the community and not the business. In other words, it has to be in the community,” and he acknowledged that the 8(a) Program was a temporary program while the HUBZone was a longer-term program to spur economic growth because it “targeted the community around the business, and not just the business itself.”<sup>3</sup>

Ho-Chunk Inc. through its government contracting businesses and other subsidiaries has been able to create jobs for tribal members and members of the local community, has raised the median household income of Reservation residents and has started to reverse hundreds of years of poverty on the Reservation. This has been done primarily through profits from the 8(a) program, and the impact is felt throughout the region, not just the local community.

Ho-Chunk, Inc. commissioned an independent study in 2018 from Goss & Associates Economic Solutions of Omaha, Nebraska. The study reported the findings below for the Winnebago Indian Reservation. Ho-Chunk’s work in SBA 8(a) contracting is a major driver of the Tribe’s current social and economic progress, including:

- Household income on the reservation grew 83% from 2000 to 2016, rapidly outpacing the national average and surrounding states of Iowa, Nebraska and South Dakota.
- The number of people living in poverty decreased 6% from 2000 to 2016, however the poverty rate still remains at a staggering 31.4% on the Winnebago Reservation compared with 10% to 14% nationally and in surrounding areas.

<sup>1</sup> See e.g. S. 208, The HUBZone Act of 1997: Hearing Before the Senate Comm. on Small Bus., 105th Cong., 1st Sess. Pg. 3 (April 10, 1997).

<sup>2</sup> *Id.* pg. 14.

<sup>3</sup> *Id.* pg. 15.

- Home ownership increased 8.4% from 2000 to 2016, and median home values climbed 24% from 2011 to 2016.
- Enrollment in the Winnebago Public School District grew 43% since 2001.
- Adults with a bachelor's degree or higher on the reservation increased 70% since 2011.

The HUBZone program could assist with greater economic growth, not just for our community, but others as well, if the regulations were simplified and the program regulations harmonized with other contracting regulations, such as the successful 8(a) Program.

We applaud Congress and SBA's efforts to improve the HUBZone Program, however, SBA has not reached its goals of Stability, Certainty, and Flexibility in this Program. The HUBZone regulations are difficult to meet, which is one of the reasons there are few HUBZone firms, and as you mentioned several times during the hearing, the modest 3% goal has never been met since the Program was created.

Our letter details some of the requirements for the Program, and we make some recommendations for improvement.

**Recommendations:**

A few years ago, the SBA modified the HUBZone regulations to allow for a one-year certification<sup>4</sup>, where the small business concern would be treated as a certified HUBZone for that one-year period, *unless*, it was acquired, merged, or failed to attempt to maintain the minimum employee residency requirement. The first two requirements are consistent with other contracting regulations and are there to keep large firms from buying small business concerns and taking small business contracts, which is as it should be. We believe those requirements should remain the same. However, the one-year certification period is not enough, especially with the continuing residency requirements. As you know, contracts can fluctuate a lot during a year. If the employee residency drops below the minimum requirement, a company is often forced to voluntarily decertify. This causes difficulties for the company and quite often for its government customer. In other programs, there is a longer time period to maintain requirements to remain in the respective program which gives a small business time to anticipate and plan for change.

Ho-Chunk recommends that the requirements for the HUBZone program be changed to harmonize with other programs that have a definitive time frame for program eligibility. SBA already has a three-year program examination requirement<sup>5</sup>. We suggest that once eligibility is established for a HUBZone firm, that eligibility is established for a three-year period. At the Program examination date, the firm would need to meet the requirements to remain eligible. This definitive time period, without the need for an "attempt to maintain", would allow Stability, Certainty, as well as Flexibility to the company. It would still serve the goal enunciated at that original hearing in 1997, to create opportunities in economically distressed areas, without complicated regulations barring the way. That stability would also encourage firms to relocate to HUBZone areas.

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<sup>4</sup> See 13 CFR 126.501(a).

<sup>5</sup> See 13 CFR 126.500(b).

The 8(a) Program has two distinct stages, Developmental and Transitional. These stages paced throughout the nine-year program allow firms to plan and develop their business based on decreasing percentages of 8(a) and increasing percentages of non-8(a) work. Ho-Chunk would suggest that SBA consider a similar staging for the HUBZone program. If the initial percentage of employee requirement were at 20% for the first year and entry into the program, then 25% for the second year, and the required 35% by the end of the third year and the program examination period, as well as all subsequent years, that would make it easier for companies to enter the program and allow for growth as well as employment planning by the small business concern. This would make it easier for small businesses to enter and remain in the Program.

If the goal of the program is to create jobs and stimulate the economy in economically distressed areas, then we need to encourage more firms to locate in those areas and apply to the Program. We believe these two suggestions would accomplish that. With more firms in the Program, government customers would have the ability to find qualified HUBZone small businesses to meet their contracting needs which would help them meet their required goals.

Ho-Chunk also requests a change to the principal office requirement for tribally-owned firms. Currently the principal office means the location where the greatest number of the concern's employees at any one location perform their work.<sup>6</sup> Ho-Chunk would request that if an office is located on an Indian reservation, that office would be automatically be designated as the principal office of the HUBZone firm.

**Conclusion:**

Ho-Chunk believes the HUBZone Program can be a successful federal program that can help create economic development in underserved communities such as Indian Country. But there needs to be substantial change to the Program before it can reach that stage.

Please do not hesitate to contact us if you would like any further information.

Sincerely,



Annette Hamilton

COO - Ho-Chunk, Inc.

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<sup>6</sup> See 13 CFR 126.103.