

CLIENT ALERT

HUBZone Program Rule Change Shortens Waiting Period for Program Reapplication and Signals Upcoming Decertification of Many HUBZone Firms

July 22, 2011

On July 21, 2011, the SBA published an interim final rule amending its regulations pertaining to the HUBZone Program in the Federal Register. See 76 Fed. Reg. 43571 (July 21, 2011). This interim final rule allows a declined or decertified HUBZone small business to reapply to the HUBZone Program 90 calendar days after the firm's application for the HUBZone Program is denied, or the firm is decertified from the HUBZone Program, provided that the firm has overcome the reasons for decline or decertification and is currently eligible. The proposed rule directly amends 13 C.F.R. § 126.309 and 13 C.F.R. § 126.803, which before required firms to wait 12 months after the date of decline or decertification before reapplying.

The rule change was issued as an interim final rule, meaning it takes effect immediately. Interested parties have until August 22, 2011, to submit any comments to the SBA to be considered when the SBA issues a final rule in the future.

Beyond shortening the time period for reapplying to the HUBZone Program, the interim final rule addresses some of the issues HUBZone Program participants will face after the results of the 2010 Census are published. Later this year, the Census Bureau will publicly release the first results of the 2010 Census, which, according to the SBA, will potentially affect the eligibility of **nearly half** of all HUBZone Program participants. Many of the affected firms are currently located in "redesignated areas" – that is, areas that at one time were located in a HUBZone but are no longer considered to be HUBZones due to changes in census tract data. In 2000 and 2004, Congress amended the Small Business Act to provide a grace period to firms located in redesignated areas. The idea was to give these firms enough time to recoup their investments in the HUBZone business and to move their office to a new HUBZone location. Accordingly, firms located in a redesignated area were allowed to remain in the HUBZone Program until the later of: (1) the public release of the first results from the 2010 Census that affects the eligibility of the HUBZone; or (2) three years after the date on which the former HUBZone became a redesignated area.

With the expected release of the first 2010 Census results this fall, the grace period for many firms located in HUBZone areas is about to expire. Indeed, firms located in areas that were redesignated prior to 2008 likely have only a few months left before the SBA will deem them to be ineligible for the HUBZone Program. When this occurs, the SBA will automatically propose for decertification all current HUBZone firms with principal offices in areas that are no longer qualified HUBZones. Although the SBA has not suggested that it will automatically propose decertification for those HUBZone firms who might fall below the 35% employee residency requirement due to the loss of eligibility for redesignated areas, HUBZone firms must be mindful of this ramification as well.

Based on this interim rule, we expect that many HUBZone firms will receive decertification letters from the SBA starting this fall. Although the shorter 90-day waiting period for reapplication will help these firms to get back into the program more quickly if they can reestablish eligibility, the wait will still likely stretch many months beyond the 90-day waiting period while the SBA reviews what may be a large number of reapplications. Thus, if you are currently located in a redesignated area, you should proactively address the likelihood that you will receive a decertification letter. There may be steps that you can take in the next several months to minimize the disruption to your HUBZone business. In most cases, it will be far more advantageous for you to take these steps before you receive a decertification letter from the SBA.

If you have questions about the proposed regulation, or if you would like help in preparing a strategy to ensure your continued eligibility for the HUBZone Program, please contact us at (202) 857-1000. You may also email inquiries to Jon Williams at jwilliams@pilieromazza.com.