

# Congress of the United States

## U.S. House of Representatives

### Committee on Small Business

2361 Rayburn House Office Building

Washington, DC 20515-6315

March 27, 2017

The Honorable Linda McMahon  
Administrator  
U.S. Small Business Administration  
409 3rd Street, SW  
Washington, DC 20416

Dear Administrator McMahon:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Small Business continues to conduct oversight over the U.S. Small Business Administration's (SBA) Historically Underutilized Business Zone (HUBZone) Program. As part of this oversight, the Committee requests additional information about the SBA's decision last year to lift the program's statutory 20 percent cap.

The HUBZone Program provides preferential access to federal contracting opportunities for eligible small businesses according to congressionally-established criteria. To be eligible, small businesses must be located in HUBZone areas. These areas are designated by statute, using criteria and information determined by other agencies. One of the categories prescribed by law are qualified census tracts (QCTs).

Last year, the SBA unilaterally decided to lift the statutory 20 percent cap on QCTs without congressional action. According to a June 10, 2016 internal SBA legal opinion, the SBA concluded that "it is appropriate for the SBA to use the QCT data without the population caps."<sup>1</sup> This action produced 2,015 additional HUBZones across the country.

Shortly after the SBA's decision, Congress amended the Small Business Act to allow removal of the cap—but only for HUBZone designations in Puerto Rico, and with limitations.<sup>2</sup> According to the legislative history for the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Congress viewed the 20 percent cap as a statutory requirement for

---

<sup>1</sup> Memorandum from John W. Klein, Assoc. Gen. Counsel for Procurement Law to Mariana Pardo, Dir., HUBZone Program, U.S. Small Bus. Admin. (June 10, 2016) (on file with Committee).

<sup>2</sup> The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Pub. L. No. 114-187 (June 30, 2016).

HUBZone designations—which could be changed only by a further act of Congress—not as a discretionary factor that could be changed by SBA.<sup>3</sup>

The Committee has significant questions about SBA’s legal authority to stop applying the cap outside of Puerto Rico. The SBA did not sufficiently answer those questions at the Committee’s September 7, 2016 hearing.<sup>4</sup> In light of its concerns, the Committee requests that the SBA provide the Committee a briefing to explain in further detail the agency’s legal rationale for its decision to lift the 20 percent cap without congressional action. To schedule this briefing, please contact Vivian Ling or Jessica Donlon of Committee Staff at (202) 225-5821.

Sincerely,



Steve Chabot  
Chairman



Nydia Velazquez  
Ranking Member

---

<sup>3</sup> See 162 Cong. Rec. H3632 (daily ed. June 9, 2016) (statement of Rep. Pierluis) (“The amendment will only extend the HUBZone program to those census tracts in Puerto Rico that would have qualified for the program in the absence of the cap. So it does not constitute an unwarranted expansion of the HUBZone program.”).

<sup>4</sup> *Ensuring Opportunities: Oversight of the HUBZone Program Before the H. Comm. on Small Business*, 114th Cong. (2016).