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# Congresswoman Nydia M. Velázquez



Representing New York's 12<sup>th</sup> Congressional District  
Ranking Democrat, House Small Business Committee

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FOR IMMEDIATE RELEASE

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March 28, 2002

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Mr. Mike McHale  
Associate Administrator for the  
HUBZone Empowerment Contracting Program  
409 3rd Street, S.W.  
Washington, DC 20416

Dear Mr. McHale:

I submit these comments to the January 28, 2002 proposed rule regarding changes to the HUBZone Program in my capacity as Ranking Democratic Member of the Committee on Small Business.

Primarily, I object to the proposal for the establishment of "parity" between the HUBZone Program and the 8(a) Program. Both programs are administered by the SBA's Office of Government Contracting and Business Development. The HUBZone Program was designed to benefit low income individuals and welfare recipients by the injection of federal contracting dollars in low income communities, or those communities suffering from high unemployment. The 8(a) Program, on the other hand, promotes individual entrepreneurship by minority business owners through the awarding of federal contracts to these businesses. By having two different programs with the same solution - federal contracts - the actual consequence of the HUBZone Program has been the creation of a parallel program to the 8(a) Program.

I am particularly concerned that changing the current regulatory priority for the 8(a) Program over the HUBZone Program will have a significant negative impact on the 8(a)

Program. For proof of this, one must look no further than the SBA's statement in its proposed regulation of January 28, 2002, which clearly states that "(n)on-HUBZone concerns currently participating in the Federal marketplace will be affected economically as a result of their not being eligible to compete for contracts that are restricted to the HUBZone Program." In the SBA's final regulations for the HUBZone Program, published in the Federal Register on June 11, 1998, the SBA states that "...the legislative history includes numerous statements of congressional intent indicating that the

HUBZone program should not adversely affect the 8(a) Program." It is very disturbing to me that the SBA has reversed its position. If the legislative history was clear to the previous Administration, why is it suddenly not clear to the current Administration?

I am concerned that the reversal of the SBA's position sets a bad precedent for program administration. Programs should be administered consistently for the benefit of current program participants and future participants. Substantive changes that go beyond congressional intent must not be made without congressional approval.

The phrase "congressional intent" clearly implies that Congress, as a whole, intends a particular action. It defies reason that the SBA is not aware of actions taken by Congress in the Small Business Reauthorization of 2000. At that time, the Senate attempted to invoke "parity" between the 8(a) Program and the HUBZone Program through legislation. As this was not the intent of both chambers of Congress, this provision was struck down in the final version of the law. Obviously, had it been the intention of Congress, it would have been a part of the final version of the law. Now, the SBA is attempting to invoke this provision by regulation - contrary to the obvious intent of both chambers of Congress.

The SBA also now argues that the phrase "notwithstanding any other provision of law" in Section 31 of the Small Business Act prohibits the SBA from establishing a priority for the 8(a) Program over the HUBZone Program. When enacting the HUBZone Program, the previous Administration took this language into account when stating in the final HUBZone regulations on June 11, 1998, that "SBA balanced HUBZone contracting with the stated Congressional purpose in the Small Business Act of maximizing 8(a) contracting where practicable." The SBA's current regulations providing a preference for the 8(a) Program over the HUBZone Program are clearly supported by the legislative intent of the Small Business Act. It is contrary to the record to suggest that the HUBZone Program was ever intended to preempt the provisions in the Small Business Act regarding the 8(a) Program. Further, numerous court cases support the notion that the phrase "notwithstanding any other provision of law" is not always construed literally.

Without adequate provisions for a priority for the 8(a) Program over the HUBZone Program, it is clear that minority-owned businesses will be harmed. The fact that there is no personal net worth limitation on HUBZone companies means that these companies will likely be better financed and more likely to have the resources to perform Federal

contracts than 8(a) companies. Further, because HUBZone companies are more likely to have employees that are paid at a lesser wage, their costs of doing business will likely be lower than for 8(a) companies. Lastly, rents in designated HUBZones, are no doubt lower than in areas that are not designated HUBZones - where the vast majority of 8(a) companies are located. The end result will be that minority-owned business participants in the 8(a) Program will be less competitive than their HUBZone Program counterparts. And, because they will likely be less competitive, they will be less likely to win Federal contracts - further exacerbating the need for assistance to minority businesses.

Is the solution to provide a "super preference" for 8(a) firms located in HUBZones? Although, the "super preference" would be beneficial to the roughly 17 percent of 8(a) companies that would qualify for it, I am not only concerned that it does not benefit an adequate number of companies, but I am concerned about potential policy implications that are much more profound. The goal of minority business programs, dating back to P.L. 95-507, is to not only foster minority business entrepreneurship to ensure a diverse industrial base, but also to enhance the "competitive viability" of these companies. Providing incentives to minority businesses to locate in areas of high unemployment or low income - away from their suppliers, away from their customers, and away from a qualified employee pool - does nothing to enhance their "competitive viability."

In addition to its "parity" proposal, the SBA is also recommending a number of structural changes to the HUBZone Program for what appears to be the sole purpose of increasing the number of participant companies. These proposals clearly go beyond the intent of Congress. Further, I find it supremely ironic that the SBA is proposing regulatory changes to increase the number of HUBZone companies, while the SBA has recommended no regulatory proposals to increase the number of 8(a) companies or SDB companies.

Rather than proposing changes that would ensure individuals who reside in low income communities or in areas of high unemployment are receiving high-paying jobs and otherwise benefitting from their employer's HUBZone participation, the SBA has taken the opposite tack. The SBA's proposals to expand the HUBZone Program create the opportunity for a company to represent itself as a HUBZone company under the illusion of helping low income communities, while at the same time taking work away from small businesses, and especially minority-owned businesses that are participants in the 8(a) Program. A loophole is created in how employees are counted. The SBA is proposing to lessen its already lax oversight to ensure that HUBZone companies maintain their eligibility. The proposed regulations offer no protections whatsoever to small business currently performing on contracts, so these contracts run the risk of being taken away from small businesses and given to HUBZone companies.

Therefore, I must object to all of the proposals contained in the proposed rule that are not required to implement P.L. 106-554. With the changes the SBA proposes, the HUBZone Program will be moved too far from its original goal of investment in communities

experiencing high unemployment and low income, while at the same time, threatening the viability of minority-owned businesses.

In addition to the substantive provisions contained in the regulation, SBA has skirted its responsibilities in complying with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) as specified below.

The RFA imposes both analytical and procedural requirements on Federal agencies to ensure that they carefully consider the effect of their regulations on small businesses. The January 28th proposed HUBZone regulation clearly states that this regulation may have a significant economic impact on a substantial number of small businesses. Therefore, it is subject to particular attention regarding its impact on small businesses and a full analysis under the RFA. The RFA specifically requires Federal agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure such proposals are given serious consideration. However, in the HUBZone regulation, the SBA only actually proposes one approach to changing the HUBZone program. In order to fully comply with the RFA, I encourage you to develop and propose regulatory alternatives that will minimize the impact of this regulation on small firms.

I am also concerned about your compliance with section 609(a) of the Regulatory Flexibility Act which requires agencies to assure that small businesses have an opportunity to participate in rulemakings that will considerably impact them. The success of the SBA in carrying out your obligations under the RFA requires early and continuing interaction with small businesses throughout the regulatory development process. I encourage you to make outreach to 8(a) firms in particular an important part of your regulation development process. Your interactions with small businesses should be a genuine dialogue with meaningful engagement and exchange of ideas and information.

I further request that you conduct an assessment of the impact of your regulation on 8(a) firms. This assessment can then be used to make informed decisions about minimizing unnecessary burdens on small businesses.

In the final analysis, this proposed regulation will decimate the 8(a) Program - the last Federal program designed to promote individual minority entrepreneurship. The regulation further drives the HUBZone Program away from its original mission of assisting low income individuals and communities, and increases the probability that the HUBZone Program will be highly susceptible to fraud.

It would behoove the SBA to re-read the preamble to its June 11, 1998 HUBZone final rule. The arguments laid out in that final rule which are, in fact, contradictory to many of the changes the SBA is now proposing, would be beneficial for the SBA to review prior to promulgating a final rule on these proposed changes.

Sincerely,

NYDIA M. VELAZQUEZ  
Ranking Democratic Member