

SBA Proposes New Definition of 'Employee' for HUBZone SBCs

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Garvey Schubert Barer Legal Update, August 21, 2007.

On January 26, 2007, the Small Business Administration (SBA) proposed a new definition of "employee" that may significantly change the way some HUBZone small business concerns (SBC) qualify for the program and perform federal contracts. 72 Fed. Reg. 3750 (Jan. 26, 2007)

Under the current HUBZone program definition, an "employee" is:

a person (or persons) employed by a HUBZone SBC on a full-time (or full-time equivalent), permanent basis. Full-time equivalent includes employees who work 30 hours per week or more. Full-time equivalent also includes the aggregate of employees who work less than 30 hours a week, where the work hours of such employees add up to at least a 40 hour work week. The totality of the circumstances, including factors relevant for tax purposes, will determine whether persons are employees of a concern. Temporary employees, independent contractors or leased employees are not employees for these purposes.

13 CFR § 126.103. Under the proposed rule, HUBZone SBCs would count as employees those persons employed on both a full-time and a part-time (defined as persons working at least 40 hours per month) basis, as well as leased and temporary employees, rather than only persons hired on a full-time, full-time equivalent or permanent basis.

According to the SBA, counting leased and temporary employees would both fulfill the purpose and intent of the program as well as prevent abuses. For example, the SBA notes that a SBC could, under the current definition, qualify for the HUBZone program by relying extensively on temporary and

leased employees that don't live in a HUBZone.

If the SBA adopts the proposed rule, a HUBZone SBC must carefully examine whether - under the new definition of "employees" - it is still able to certify that 35% of its employees reside in a HUBZone. Comments on the proposed rule are due on or before February 26, 2007.