



COMMONWEALTH OF  
PUERTO RICO  
Economic Development

Alberto Bacó Bagué  
Secretary

September 18, 2014

**CIRCULAR LETTER NO. 2014-001**

**RE: CERTIFICATION OF "ECONOMICALLY DISADVANTAGED BUSINESSES" AND "CRITICAL INDUSTRY SUPPLIERS"**

On December 29, 2010, the Secretary of the Department of the Treasury issued Regulation No. 7970 ("Regulation 7970") as amended by Regulation No. 8391 of October 21, 2013 in order to implement the provisions of Sections 2101, 2102, 2103 and 2104 of Act No. 120 of October 31, 1994, as amended, also known as the "Internal Revenue Code Act of 1994." <sup>1</sup>Article (g) of Reg. §2102(a)-2 of Regulation 7970 ("Regulation 7970") authorizes the Secretary of the Treasury and the Department of Economic Development and Commerce to certify businesses as "Economically Disadvantaged" or as a "Critical Industry Supplier."

The purpose of this Circular Letter is to establish the rules for the issuance of these certifications. This Circular Letter revokes and supersedes Circular Letter 2011-02, dated for December 22, 2011, referent to Certification of Economically Disadvantaged Businesses and Critical Industry Suppliers.

**I. "Economically Disadvantaged Business"**

**A. Diminished capital and credit opportunities**

For purposes of certifying a business as an "Economically Disadvantaged Business" pursuant to the authority vested upon the Secretary of the Treasury and the Department of Economic Development and Commerce according to Article (g) of Reg. §2102(a)-2 of Regulation 7970, the term "Economically Disadvantaged Business" shall mean an entity where at least 51% of the business is owned, operated and controlled

<sup>1</sup> Act No. 1 of January 31, 2011, as amended, known as the "Internal Revenue Code for a New Puerto Rico" (hereinafter, the "2011 PR-IRC"), replaced the Puerto Rico Internal Revenue Code of 1994. According to Section 3070.01 of the 2011 PR-IRC, the provisions of Sections 2101, 2102, 2103 and 2104 of the Internal Revenue Code of 1994 regarding excise tax on personal property shall remain in effect and any reference to them shall be construed as referring to the analogous versions of said Sections in the 2011 PR-IRC.

by one or more natural persons residents of Puerto Rico who are economically disadvantaged individuals. Economically disadvantaged individuals are those individuals whose ability to compete in providing goods and services to members of a controlled group which are subject to the excise tax imposed by Section 2101 has been impaired due to diminished capital and credit opportunities as compared to others providing such goods and services in the global marketplace, pursuant to the criteria discussed below.

In considering diminished capital and credit opportunities, the Secretary of Economic Development and Commerce and the Secretary of the Treasury will examine factors relating to the personal financial condition of any individual claiming disadvantaged status.

In determining an individual's access to capital and credit, consideration shall be given to any assets that the individual has transferred to an immediate family member, or to a trust a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to the certification application, unless the individual claiming economically disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

An individual who exceeds any one of the following thresholds related to net worth, personal income or total assets will be deemed to have access to capital and credit, and therefore not economically disadvantaged.

i. Net Worth

The net worth of an individual claiming disadvantage must be less than \$50,000. In determining such net worth, it shall be excluded the ownership interest in the applicant and the equity in the primary personal residence (except any portion of such equity which is attributable to excessive withdrawals from the applicant). Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

A contingent liability does not reduce an individual's net worth.

Funds invested in an Individual Retirement Account (IRA) or other official retirement account that are unavailable to an individual until retirement age without a significant penalty will not be considered in determining an individual's net worth. In order to properly assess whether funds invested in a retirement account may be excluded from an individual's net worth, the individual must provide information about the terms and restrictions of the account to the Secretary of Economic Development and Commerce and the Secretary of the Treasury, and certify that the retirement account is legitimate.

ii. Personal Income

If the average individual's adjusted gross income over the three taxable years preceding submission of the application exceeds \$50,000, the Secretary of Economic Development and Commerce and the Secretary of the Treasury will presume that such individual is not economically disadvantaged.

iii. Total Assets

An individual will not be considered economically disadvantaged if the fair market value of all his or her assets (including his or her primary residence and the value of the applicant business or sole proprietorship) exceeds \$500,000. The only assets excluded from this determination are funds excluded as being invested in a qualified IRA account.

The Secretary of Economic Development and Commerce and the Secretary of the Treasury shall have the authority to jointly certify a business as an "Economically Disadvantage Business". The certification provided in these cases, shall be valid for a two (2) year period after its original issuance, but it may be renewed if they continue to comply with the terms established to issue such Certification.

**B. Excluded businesses**

For purposes of certifying businesses as an "Economically Disadvantaged Business," the definition of the term "Economically Disadvantaged Business" shall not include businesses dedicated to providing legal, banking, accounting and/or tax consulting services.

**II. Critical Industry Supplier**

The Secretary of Economic Development and Commerce and the Secretary of the Treasury, shall have the authority to jointly certify a business as a Critical Supplier, if the product(s) sold or services rendered to exempted companies devoted to manufacturing are crucial for the completion of the manufacturing activity or required by any local or federal regulatory agency. In the case of products sold, the products must be manufactured in Puerto Rico by the entity requesting the certification. In the case of services, they must be rendered in Puerto Rico by a company with offices here and they must furthermore comply with the meaning of "key supplier", as said term is defined according to Section 2(d)(1)(D)(iii) of Act No. 73 of May 28, 2008 as amended.

In addition, the determination of a business as a Critical Supplier shall be done taking into account the following factors:

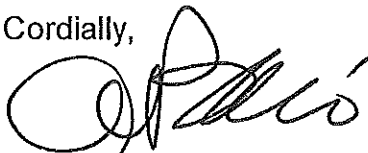
1. Services rendered or products sold to exempted companies devoted to manufacturing which they crucially need to remain viable;
2. Number of suppliers established in Puerto Rico providing the same service or product, their volume of business and years of operation in Puerto Rico;
3. Applicant volume of business for the last 4 years (or projections if less than 4 years of operation), of the service or product for which the certification is requested;
4. Applicant years of operation in Puerto Rico, if any, providing the service or manufacturing the product for which the certification is requested;
5. Reasons for applicant unusual fluctuations in the volume of business;
6. Potential increase in the volume of business;
7. Actual and/or potential jobs to be created by the applicant business; and
8. Any other factor determined to be relevant for the determination.

The Critical Industry Supplier Certification provided in these cases shall be valid for a two (2) year period after its original issuance, but it may be renewed if they continue to comply with the terms established to issue such Certification.

The Certification shall specify the product or service for which the Critical Industry Supplier is being certified.

The provisions of this Circular Letter shall be effective immediately and shall apply prospectively. For more information on the certification process, please contact the Department of Economic Development and Commerce at 787-765-2900.

Cordially,



Alberto Bacó Bagué

Secretary

Department of Economic

Development and Commerce