

Fair Share Objectives Webinar, December 5, 2023

Frequently Asked Questions (FAQ)

Q1: Do we include salary expenditures in our Minority Business Enterprise/Women Business Enterprise (MBE/WBE) reporting?

A1: Recipients must complete [EPA Form 5700-52A](#) to report MBE/WBE utilization under EPA assistance agreements when the combined total of funds budgeted for procuring supplies, equipment, construction, or services exceeds the Simplified Acquisition Threshold (\$250,000). Annual reports are due by October 30th of each year. Final reports are due by October 30th or 120 days after the end of the project period, whichever comes first.

Q2: Is the \$250k threshold applicable to the total grant agreement budget, or just the equipment, supplies, and services portion of the budget?

A2: If the combined total of funds budgeted for procuring supplies, equipment, construction, or services exceeds the \$250K threshold, then a recipient must negotiate Fair Share Objectives (FSO).

Q3: Are the FSO obligations of other EPA grant recipients public?

A3: No.

Q4: Do State Revolving Fund (SRF) subrecipients over \$250k have to create a Fair Share Objective? And if so, do they have to go through EPA approval?

A4: Yes, the only recipients that are exempt are recipients of an EPA financial assistance agreement in the amount of \$250K or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250K or less in any one fiscal year. No, FSOs are negotiated through the loan recipient. See 40 CFR Part 33 Section 402.

Q5: Are the regulations still the same as before? The FSO goals were not in place for a few years.

A5: EPA is reinstating the older requirements of FSOs.

Q6: Please define fair share as to intent and performance.

A6: A fair share objective is an objective based on the capacity and availability of qualified, certified MBEs and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services, and supplies compared to the number of all qualified entities in the same market for the same procurement categories, adjusted, as appropriate, to reflect the level of MBE and WBE participation expected absent the effects of discrimination.

Q7: We will award Bipartisan Infrastructure Law (BIL) grants for over \$250,000. None of the applicants budgeted sufficient funds to do the research to develop FSOs. This will take a significant amount of work. Can you develop FSOs for each region?

A7: No, unfortunately regional FSOs will not be available. However, recipients can accept the goals from a lead state agency as long as it's within the same geographical market.

Q8: For recipients that receive multiple EPA grants, such as states, do they have to create Fair Share Objectives for every single grant? Or can the recipient do just one and cover grants received within the 3 years?

A8: Once FSOs are negotiated, they remain in place for three years.

Q9: Can you elaborate on how to determine Fair Share Objectives?

A9: The FSO negotiation process includes many flexibilities to recipients to craft their FSO. Such flexibilities include:

- Allowing multiple constructs of "Relevant Geographic Market" (scope of the data analysis).
- Offers multiple methods for using different data sources (i.e., Census Data, Disparity Studies, etc.).
- Allowing the combination of the four categories into one goal (construction, equipment, services, and supplies).
- Allowing the combination of MBE goal and WBE goal into one consolidated goal.
- Allows recipients to designate a lead agency for negotiation.
- Allows recipients to adopt FSOs of another recipient with special considerations.

Q10: Can you share the slides?

A10: The presentation from today's webinar is available for download from the Fair Share Objectives Webinar webpage: https://www.epa.gov/system/files/documents/2023-12/fair-share-objectives-webinar-presentation_12.5.23.pdf.

Q11: These are goals not requirements, correct? Are we required to meet a certain percentage?

A11: FSOs are not quotas; therefore, compliance with the specific percentage cannot be enforced.

Q12: Can you elaborate on what it means when you say the objectives are in place for 3 years? If a grant is active for longer than that, what happens at year 4 regarding these objectives?

A12: Once FSOs are negotiated, they remain in place for three years unless they are required to be renegotiated.

Q13: For the exemptions, would the \$250k or less be the amount reimbursed in a year or a grant award amount? For example, a grantee received a \$500k grant but only \$200k is spent each year. Would they then be exempt?

A13: No, the \$250k or less exemption is not based on the reimbursement amount. This exemption is based on the total amount of the assistance agreement (EPA and Recipient Share).

Q14: Can you list all the exemptions?

A14: **General.** (a) A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is not required to apply the fair share objective requirements of this subpart. This exemption is limited to the fair share objective requirements of this subpart.

(b) **Clean Water State Revolving Fund (CWSRF) Program, Drinking Water State Revolving Fund (DWSRF) Program, and Brownfields Cleanup Revolving Loan Fund (BCRLF) Program Identified Loan Recipients.** A recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the fair share objective requirements of this subpart to an entity receiving an identified loan in an amount of \$250,000 or less or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year. This exemption is limited to the fair share objective requirements of this subpart.

(c) **Tribal and Intertribal Consortia recipients of program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR Part 35, Subpart B.** Tribal and Intertribal consortia recipients of PPG eligible grants are not required to apply the fair share objective requirements of this subpart to those grants. This exemption is limited to the fair share objective requirements of this subpart.

(d) **Technical Assistance Grant (TAG) Program Recipients.** A recipient of a TAG is not required to apply the fair share objective requirements of this subpart to that grant. This exemption is limited to the fair share objective requirements of this subpart. (See 40 CFR § 33.411)

Q15: Do you have a few websites we can use for research?

A15: The [Department of Transportation](#) and [Census Bureau](#) websites are useful for FSO research.

Q16: Do SRF subrecipients over \$250k have to create a Fair Share Objective? And if so, do they have to go through EPA approval or can they be approved by the State SRF program?

A16: Yes, EPA approval is required. You can also accept the goals of the State.

Q17: Do states need to determine their Fair Share Objectives or does EPA do that for us?

A17: The recipients must determine their FSOs.

Q18: Is there a specific definition of a Technical Assistance Grant (TAG)? For example, is TCTAC Environmental Justice funding?

A18: A TAG provides money for activities that help communities participate in decision-making at eligible Superfund sites. See [40 CFR Part 35, Subpart M](#) for more information on TAGs. Environmental Justice Thriving Communities Technical Assistance Center (EJ TCTACs) provide funding to remove barriers and improve accessibility for communities with environmental justice concerns.

Q19: Do subrecipients of an EPA award need to have separate FSO obligations?

A19: No. Subrecipients of an EPA award do not have separate FSO obligations.

Q20: Did I hear correctly that we cannot draw funds for a grant until the FSO has been approved by EPA for that grant?

A20: MBE and WBE FSOs must be agreed upon by the recipient and EPA before funds may be expended for procurement under the recipient's financial assistance agreement.

Q21: Where can we find the goal that EPA has established?

A21: The statutory requirements can be found on the [DBE Program Requirements website](#).

Q22: Does the EPA publish examples of FSOs?

A22: Not currently.

Q23: Are there any plans to conduct a training covering the entirety of Title 40/ Chapter I / Subchapter B / Part 33? I'm especially interested in Subpart C: Good Faith Efforts, and Subpart E: Recordkeeping and Reporting.

A23: Training is a key component of EPA's DBE Program. We are in the process of developing more training.

Q24: So, this requirement pretty much applies to all grants that started on October 1, 2023, or later, correct?

A24: Effective October 1, 2023, means that all new awards made on or after that date will have a term and condition requiring recipients to comply with the 40 CFR Part 33, Subpart D. An FSO is an objective based on the capacity and availability of qualified, certified MBEs and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services, and supplies compared to the number of all qualified entities in the same market for the same procurement categories, adjusted, as appropriate, to reflect the level of MBE and WBE participation expected absent the effects of discrimination.

Q25: Can we get a summary of changes between older requirements and the newer requirements?

A25: There are no changes in the new requirements. EPA is reinstating the older requirements of FSOs.