

Questions & Answers - Obligation Limitation for Surface Transportation Block Grant Program (STBG) Funds Suballocated to Urbanized Areas

Note: For the purposes of this document, the term “UZA over 200,000” means an urbanized area with a population of over 200,000 individuals.

Question 1: What does section 133(e) of title 23, United States Code (U.S.C.) require?

Answer 1: Section 133(e) of title 23, U.S.C. requires that a State with STBG funds suballocated to UZAs over 200,000 make formula obligation limitation available to each of these areas based on the criteria set forth in such provision.

Question 2: How much formula obligation limitation must be made available to each of the UZAs over 200,000?

Answer 2: A State must make available to each of these UZAs over 200,000 an aggregate (5-year) amount of obligation limitation equal to the following:

$$\frac{\text{Aggregate FY 2016-2020 STBG funds suballocated to a UZA over 200,000}}{\text{Aggregate amount of FY 2016-2020 formula obligation limitation distributed to the State}} \times \text{Aggregate FY 2016-2020 Fed-aid apportionments to the State (excluding amounts exempt from the obligation limitation)}$$

Question 3: To which time period does the memorandum titled [*Obligation Limitation for Funds Suballocated to Urbanized Areas with Populations of Over 200,000 Individuals*](#) apply?

Answer 3: The memorandum applies to the FY 2016–2020 time period and will help ensure that States meet the requirements of section 133(e), for the 5-year period covered by the Fixing America’s Surface Transportation (FAST) Act.

Question 4: Are Transportation Alternatives (TA) funds that are suballocated to UZAs over 200,000 subject to the same obligation limitation requirement under section 133(e)?

Answer 4: No. Section 133(h)(2)(B)(ii) of title 23, U.S.C. explicitly excludes TA funds from the obligation limitation requirement in section 133(e).

Question 5: Do Surface Transportation Program (STP) funds suballocated to a UZA over 200,000 that were apportioned prior to the FAST Act and obligated using obligation limitation

made available during the period of FY 2016-2020 count toward meeting the section 133(e) requirement?

Answer 5: Yes. Funds suballocated to UZAs over 200,000 that are obligated in FY 2016-2020 and are associated with an authorization act prior to the FAST Act will count toward the section 133(e) requirement. The STBG under the FAST Act is a continuation of the STP under previous authorization acts. As such, it does not matter which of these two programs' funds are obligated using the obligation limitation made available during FY 2016-2020 since both funds have the same project eligibilities as a continued program. Therefore, any references in this document to the use of STBG funds to meet the requirements under section 133(e) also apply to STP funds.

Question 6: If a State makes available obligation limitation for TA funds suballocated to a UZA over 200,000, does that count toward meeting the section 133(e) requirement?

Answer 6: No. Only obligation limitation made available for STBG funds suballocated to a UZA over 200,000 counts toward meeting the section 133(e) requirement.

Question 7: Aside from suballocated STBG funds, if a State makes available obligation limitation for other funds (*i.e.*, Congestion Mitigation and Air Quality Improvement Program, National Highway Performance Program, Highway Safety Improvement Program) that are obligated within a UZA over 200,000, does that count toward meeting the section 133(e) requirement?

Answer 7: No. Only obligation limitation made available for STBG funds suballocated to a UZA over 200,000 counts toward meeting the section 133(e) requirement.

Question 8: What are the program codes associated with the STP and STBG funds that count toward the section 133(e) requirement?

Answer 8: The following STP and STBG program codes count toward the section 133(e) requirement: 33C0, Q230, H230, L230, L23E, L23R, M230, M23E, and Z230.

Question 9: Do transfers of contract authority along with the associated obligation limitation to other agencies (*i.e.*, the Federal Transit Administration) of funds suballocated to UZAs over 200,000 count as obligation limitation made available for purposes of the section 133(e) requirement?

Answer 9: Yes. Any STBG funds, inclusive of the associated obligation limitation, suballocated to UZAs over 200,000 that are transferred to another agency for an eligible project will count toward the section 133(e) requirement.

Question 10: What satisfies the requirement to “make available” obligation limitation?

Answer 10: The requirement to “make available” obligation limitation is satisfied by providing obligation limitation to a UZA over 200,000 in a reasonable manner. This reasonableness determination may include an evaluation of whether the obligation limitation is made available

in a manner that permits the UZA sufficient time to utilize it and if the affected UZA is practically able to use the obligation limitation given its currently available projects. Other factors may also be considered. Division Offices will work with States and metropolitan planning organizations (MPO) to ensure that obligation limitation is reasonably made available.

Question 11: The memorandum referenced in Question 3 discusses the need for “ensuring that States have a plan to meet the requirement under section 133(e).” Is there a requirement that the States develop a formal or written plan?

Answer 11: Although there is not a requirement, States are encouraged to coordinate with the appropriate MPO to create a written plan that reflects the agreed upon estimated amounts of obligation limitation to be made available each fiscal year. This plan should cover the entire 5-year period of the FAST Act and be updated annually to reflect actual obligation limitation amounts made available for the most recently completed fiscal year. It should also be updated to reflect more accurate obligation limitation estimates for the future fiscal year(s). The State and appropriate MPO should sign the plan and submit it to the appropriate Division Office for review to evaluate if the State is on track to fulfill its section 133(e) requirement.

To assist States with completing the recommended plan, the Office of the Chief Financial Officer (HCF) will provide estimated amounts of STBG contract authority for UZAs over 200,000 and estimated obligation limitation ratios for the future fiscal years covered under the FAST Act. These estimated contract authority amounts and obligation limitation ratios will be updated on an annual basis to more accurately reflect the current funding situation. The States and MPO should use these updated estimates to revise their plans annually.

Question 12: What other documentation should a State create to demonstrate its compliance with section 133(e)?

Answer 12: A State, in conjunction with each MPO for a UZA over 200,000 and the Division Office, should complete a formal written memorandum on an annual basis (ideally after the end of each fiscal year) signed by all interested parties that documents the amount of obligation limitation made available to the UZA over 200,000 for a given fiscal year(s). This memorandum may serve as a notice of record for ensuring that the section 133(e) requirement is met. The HCF will provide a template memorandum that can be used as a guide. There is no requirement for a Division Office to submit the signed memorandums to HCF.

Question 13: What review of amounts of obligation limitation made available under section 133(e) should be conducted by Division Offices and HCF?

Answer 13: In addition to reviewing the plan agreements and formal written memoranda produced as recommended in Questions 11 and 12, respectively, the Division Office, in coordination with the State, should also track the amounts of obligation limitation made available to UZAs over 200,000 against the required amounts on a regular basis to ensure that the section 133(e) requirements will be met.

If, based on these reviews, the Division Office determines that the State is at risk of not satisfying the section 133(e) requirement, the Division Office should engage the State and MPO to try to resolve the issue. If this effort proves unsuccessful, the Division Office should then request assistance from HCF. In such a situation, FHWA highly recommends that the Division Office reach out to the appropriate entities sooner rather than later to ensure adequate time to remedy any potential problems.

Question 14: If, in accordance with the plan and as discussed in Question 10, a State reasonably makes available obligation limitation for STBG funds suballocated to a UZA over 200,000, but the UZA does not or cannot utilize the full amount, does that amount count toward the section 133(e) requirement?

Answer 14: Yes. The law specifically states that a State shall “make available” obligation limitation to UZAs over 200,000. The statutory requirement under section 133(e) is satisfied when the required proportional amount of obligation limitation is reasonably made available to the UZA regardless of whether it obligates in full such obligation limitation.

If the UZA is unable to fully utilize the obligation limitation reasonably made available in a given fiscal year, the UZA should coordinate with the State on any unused obligation limitation before the end of the fiscal year to ensure that it does not expire. The State can then use this obligation limitation to obligate projects prior to the end of the fiscal year.

Question 15: Why does the calculation of the amount of obligation limitation required to be made available for use in a UZA over 200,000 under section 133(e) include formula obligation limitation distributed under both the annual obligation limitation notice(s) and August redistribution?

Answer 15: Section 133(e) requires that States make available an amount of obligation limitation for use in UZAs over 200,000 based on a calculation using the aggregate amount of obligation limitation distributed to the State for Federal-aid highways and highway safety construction programs during the FY 2016-2020 period.

The statute does not distinguish between obligation limitation received via the annual obligation limitation notice(s) and obligation limitation received via August redistribution. Moreover, both are the same type of obligation limitation and are categorized as the same once loaded into the Fiscal Management Information System. Therefore, formula obligation limitation from both sources must be included in the calculation.

Question 16: If a State makes available an amount of obligation limitation that is within a couple of percentage points of the aggregate FY 2016-2020 amount required under the section 133(e) calculation, is that sufficient? May a State make available more obligation limitation than required under section 133(e)?

Answer 16: Any amount less than the requisite full amount will not meet the requirement under section 133(e). However, a State, at its discretion, may make available more obligation limitation to the applicable UZAs over 200,000 than is required.

Question 17: During the August redistribution in FY 2020, a State may receive additional formula obligation limitation that must be factored into the section 133(e) requirement. How should a State ensure that it meets the requirement in section 133(e) given that this additional obligation limitation would be distributed so close to both the end of the fiscal year and the end of the FY 2016-2020 time period?

Answer 17: Each State is encouraged to utilize the average of its FY 2016-2019 August redistribution amounts when calculating the amount of obligation limitation to make available to UZAs over 200,000 in FY 2020. Although this method is not exact, it will assist States in calculating a more accurate amount of obligation limitation to make available in the final fiscal year.

In some cases, even with meticulous planning, a State may fall short of making available the entire amount of obligation limitation required under section 133(e). For instance, the additional obligation limitation that is distributed via the FY 2020 August redistribution may not be made available to a UZA over 200,000 in a reasonable manner due to the short duration between the period that the obligation limitation is redistributed and the end of the fiscal year. In such instances, States have an opportunity in early FY 2021 to provide UZAs over 200,000 with an additional amount of obligation limitation to make up any shortfall for the FY 2016-2020 period that occurred at the end of FY 2020. Further details on how to handle any shortfall in FY 2020 will be provided at a later date.

Question 18: If a State's calculated obligation limitation ratio is above 100 percent in a given fiscal year, is that State required to make obligation limitation available to the UZAs over 200,000 at that same obligation limitation rate, or can the State make available an amount of obligation limitation to the UZAs over 200,000 equal to 100 percent?

Answer 18: The section 133(e) requirement is based on the aggregate 5-year period of the FAST Act. Therefore, the obligation limitation ratio exceeding 100 percent in 1 or more individual fiscal years does not change the requirement. The State must make available during the 5-year period the amount of obligation limitation per the calculation specified by section 133(e).

Question 19: If a State's calculated obligation limitation ratio is above 100 percent at the end of the 5-year FAST Act period, is that State required to make obligation limitation available to the UZAs over 200,000 at that same obligation limitation rate or can the State make available an amount of obligation limitation to the UZAs over 200,000 equal to 100 percent?

Answer 19: The State must make available an amount of obligation limitation equal to the calculated aggregate percentage under section 133(e) – even if it exceeds 100 percent – since the applicable UZAs over 200,000 would have excess contract authority available (including those resulting from carryover balances from prior fiscal year apportionments) that could be used with the obligation limitation. In the event that an applicable UZA does not have enough excess contract authority to utilize the full amount of obligation limitation to be made available pursuant

to section 133(e), the State should coordinate with the MPO and Division Office regarding that situation.

Question 20: What flexibility does a State have in making the obligation limitation available to a UZA over 200,000?

Answer 20: States have the flexibility to determine the amount of obligation limitation to make available to the applicable UZAs over 200,000 each fiscal year, provided that it is made available in a reasonable manner (as discussed in Question 10) and the aggregate amount at the end of the 5-year period adheres to the total amount required under section 133(e). Thus, in a given fiscal year, a State may choose to limit the amount of obligation limitation made available to the applicable UZAs over 200,000 to less than the amount calculated for that fiscal year and then make available an additional amount of obligation limitation in subsequent fiscal year(s) to make up any shortfall that may have occurred in order to ensure that the 5-year aggregate adheres to the amount required under section 133(e). Any decision to limit the amount of obligation limitation in a given fiscal year should be made only after coordination with the Division Office, State, and MPO(s), and be reflected in any agreed upon plan, as the implementation of the section 133(e) requirement is a joint responsibility among those three entities.