

1. LEGAL

BASIC REQUIREMENT

The grantee must be eligible and authorized under state and local law to request, receive, and dispense FTA funds and to execute and administer FTA funded projects. The authority to take all necessary action and responsibility on behalf of the grantee must be properly delegated and executed.

AREAS TO BE EXAMINED

1. Designation of Recipient

By law, funding for the urbanized area formula program, in contrast with other FTA programs, is provided to the "Designated Recipient" as defined by 49 U.S.C. 5307(a)(2).

- a. In urbanized areas with 200,000 or more population, joint designation is made by the Governor, responsible local officials, and publicly owned operators of mass transportation services of a single recipient (to the extent possible) and any statewide or regional agency or instrumentality responsible under state law for the provision of service.
- b. For urbanized areas with less than 200,000 population, the Governor or the Governor's designee(s) is (are) the designated recipient(s).
- c. The designations remain in effect until amended or rescinded.

2. Source of Authority

Officials acting on behalf of the grantee must have appropriate authority. This is usually documented in an authorizing resolution passed by the grantee's governing body.

3. Annual List of Certifications and Assurances

The certifications and assurances required of FTA grantees are compiled in a single record published annually in the *Federal Register*, either before or in conjunction with the publication of FTA's annual apportionment notice. Once each year, a grant applicant must provide all certifications and assurances that can be expected to apply to any active grant of the applicant in the fiscal year. FTA expects the grant applicant to record its certifications and assurances in FTA's Transportation Electronic Award Management web-based system (TEAM-Web) and provide the appropriate electronic signatures. Should it become necessary for the grant applicant to provide "paper" certifications and assurances, the *Federal Register* notice includes a signature page that may be signed by the grant applicant's authorized official and its attorney and submitted to the appropriate regional office. Opinions of Counsel accompanying Certifications and Assurances must also be reviewed.

4. Changes in Law and Litigation

The Master Agreement requires grantee to notify FTA of changes in local or state law and pending litigation in a timely manner.

REFERENCES

1. [49 USC Chapter 53](#), Federal Transit Laws, Section 5307.
2. [FTA Circular 9030.1C](#), "Urbanized Area Formula Program: Grant Application Instructions."
3. [FTA Master Agreement](#).

QUESTIONS FOR THE REVIEW

1. *Is the grantee a Designated Recipient? If not, is there a signed supplemental agreement?*

EXPLANATION

The grantee must be a Designated Recipient or have a supplemental agreement with a Designated Recipient. If the grantee is a statewide or regional agency responsible for providing transit, it must be a Designated Recipient. This type of grantee would not need a supplemental agreement in order to receive funds directly.

REASON FOR THE QUESTION

49 USC 5307(a)(2)
FTA C 9030.1C, Ch. II

SOURCES OF INFORMATION

The document confirming the selection of the Designated Recipient should be in the regional office, usually in a one-time submissions file. A supplemental agreement should be part of each grant to an agency other than a Designated Recipient.

Documents designating recipients that are dated after September 19, 1987, must include:

- For areas with 200,000 or more population – The designation must include concurrence by the Governor or agent with authority delegated by the Governor; concurrence of publicly owned operators of mass transportation in the area; certified resolution of the officials authorized to establish policy for the MPO concurring in the designation; and an Opinion of Counsel.
- For areas with less than 200,000 population – The Governor may delegate “Designated Recipient” status to either a state agency or directly to local recipients. A letter from the Governor to FTA must document selections of Designated Recipients. An Opinion of Counsel also is required.

DETERMINATION

In most cases, the examination in this area is to determine if the proper documentation exists. If it does, the grantee is not deficient. If documentation does not exist in the regional office, it should be obtained from the grantee.

A rare problem in this area has been when a regional entity in an area with a population of 200,000 or more exists, but is not a designated recipient and the designated recipient has not entered into a supplemental agreement with the grantee and FTA.

Unless the designated recipient for that area is an entity other than the grantee, and the designated recipient continues to be responsible under the laws of that state for a capital project and for financing and directly providing mass transportation services, there must be a finding of deficient.

SUGGESTED CORRECTIVE ACTION

The appropriate parties should select a designated recipient, which ideally would be the grantee.

2. *What is the definition and source of the authority of officials acting on behalf of the grantee (e.g., authorizing resolution or by-laws)? Is the authority properly delegated and executed?*

EXPLANATION

Officials acting on behalf of the grantee must have appropriate authority as required by state or local law or by the governing body of the grantee. The authority must be delegated properly to other individuals in the agency, if necessary.

REASON FOR THE QUESTION

49 USC 5307 (a)(2)
FTA C 9030.1C, Ch. VI and Appendix F

SOURCES OF INFORMATION

During the desk review, a list of individuals who signed FTA documents on behalf of the grantee, in hard copy form and/or electronically, should be assembled. Documents to review include, at a minimum, grant applications, grant agreements, and the Annual List of Certifications and Assurances for the past three years. The grantee should be asked to identify the individuals authorized to act on its behalf. The reviewer needs to assure that the person signing or using an electronic PIN on behalf of the grantee has been authorized properly to do so.

DETERMINATION

If the person(s) who signed the documents is the authorized individual, the grantee is not deficient. If the grantee cannot demonstrate that this person has the authority to act on behalf of the grantee, the grantee is deficient. If someone other than the authorized individual(s) has signed on behalf of the grantee, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee must provide sufficient authority for the appropriate individual(s) to take official actions on its behalf. If necessary, the authority must be delegated properly.

3. *Has the grantee submitted a properly completed [Annual List of Certifications and Assurances](#)? Was it submitted on time? Was it signed (or PINned) by an authorized official and attorney with the proper authority?*

EXPLANATION

The grantee is required to make the requisite certifications and assurances by: 1) selecting, from a list provided, those certifications and assurances that will apply to all grants for the fiscal year; 2) submitting appropriate electronic signatures in TEAM or the signature page signed by the authorized representative and by the legal counsel; and 3) submitting properly signed certifications and assurances on time. Certifications and assurances are due with the first grant application in the fiscal year or within 90 days from the date of the publication of the notice in the *Federal Register*, whichever comes first.

The certifications and assurances change from year to year. Review the certifications and assurances in the TEAM system. These certifications show "Yes" for selected and "N/A" for not applicable.

The certifications and assurances require two signatures or electronic PINs: one from an authorized official and another from an attorney. Make sure the certifications have been PINned. As discussed in the previous question, make sure the individuals signing or PINning the certifications and assurances have the authority to do so. If the attorney does not PIN in the TEAM system, he or she must sign a hard copy of the affirmation and maintain the hard copy in the file.

An Affirmation of Applicant's Attorney affirming the legal authority of the grantee and indicating whether any pending legislation or litigation may affect the legal status of the grantee is part of the signature page for the certifications and assurances. Requirements for this affirmation also have varied since the inception of the annual certification process. Check the fiscal year requirements as applicable.

REASON FOR THE QUESTION

[49 USC 5307\(d\)\(1\)](#)

[FTA C 9030.1C](#), Ch. V and Appendix G

SOURCES OF INFORMATION

The [Annual List of Certifications and Assurances](#) should be entered in the TEAM system so they are easily accessible for all grants to be made in the fiscal year. The TEAM system will only accept certifications and assurances that have been PINned by the grantee's authorized official and attorney. If, for some reason, the grantee is unable to use the TEAM system, the certifications and assurances signature page is filed separately in the regional office, and not with the grant files, since it is applicable for all grants and cooperative agreements for that fiscal year.

DETERMINATION

The grantee is not deficient if it has properly selected all the certifications and assurances that will apply to all grants and cooperative agreements; properly entered its selections in the TEAM system, or completed the signature page; and submitted it on time. If any of these conditions do not apply, the grantee is deficient.

SUGGESTED CORRECTIVE ACTION

The grantee should submit a corrected Annual List of Certifications and Assurances.

4. *Has the grantee notified FTA of any change in local or state laws and/or litigation that has impact on the grantee's FTA program?*

EXPLANATION

The grantee needs to notify the Regional Counsel of any change in local or state law and/or pending litigation that may significantly affect the grantee's ability to perform the projects in accordance with the terms of the Master Agreement.

REASON FOR THE QUESTION

[FTA Master Agreement](#) for FY 2009, Sections 2.g. and 53.a.

SOURCES OF INFORMATION

During the desk review, determine if the grantee has notified the Regional Counsel of any changes in local or state laws and/or litigation in a timely manner. This type of notification may be in the form of a letter or an e-mail correspondence. If no information is available during the site visit regarding these items, ask the grantee if there were any changes in local or state laws and/or pending litigation since the last triennial review.

DETERMINATION

The grantee is not deficient if it has notified the Legal Counsel in the FTA Regional Office of any changes in local or state laws and litigation in a timely manner.

The grantee is deficient if it has not notified FTA of changes in local or state laws.

SUGGESTED CORRECTIVE ACTION

The grantee should submit the applicable information in writing to the Regional Counsel.