

**Frequently Asked Questions (FAQs) on the U.S. Department of Transportation
Disadvantaged Business Enterprise Program (DBE) and Disadvantaged Business
Enterprise in Airport Concessions (ACDBE) Program Implementation Modifications,
September 25, 2026 Final Rule**

Updated September 25, 2026

The General Counsel of the U.S. Department of Transportation has reviewed these questions and answers and approved them as consistent with the language and intent of 49 CFR parts 23 and 26. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

A. General

1. Are recipients required to submit Uniform Reports during the reevaluation process?

No. Under the final rule, recipients are not required to update their overall DBE goals until the Unified Certification Program (UCP) in the recipient's jurisdiction has completed the mandatory reevaluation process described in 49 CFR 26.111 and notified the U.S. Department of Transportation (Department or DOT) that the reevaluation process is complete. In addition, recipients cannot set any contract goals or count any DBE participation toward DBE goals until the UCP in the recipient's jurisdiction completes the reevaluation process described in 49 CFR 26.111. Because of these requirements, recipients are not required to submit Uniform Reports under 49 CFR 26.21 until the UCP for the recipient's jurisdiction has completed the reevaluation process required by 49 CFR 26.111.

B. Certification Reevaluation

DBE Termination Provisions

1. Do the regulatory DBE termination provisions continue to apply during the reevaluation period described in 49 CFR 26.111?

In an effort to ensure that UCPs have maximum opportunity to focus on completing the reevaluation process, the Department will not enforce the DBE termination provisions against an individual recipient, and will not require recipients to enforce the termination provisions against prime contractors, until the reevaluation deadline described in 49 CFR 26.111 expires, or until its respective UCP completes its reevaluation process, whichever occurs sooner. If a UCP receives an extension, the stay in enforcement only continues to apply for as long as it takes the UCP to complete the reevaluation. For example, if a UCP receives a 90-day extension but informs DOT after 60 days that they completed the reevaluation, the stay in enforcement would no longer continue past 60 days.

In addition, the Department will not enforce the DBE termination provisions in 49 CFR 26.53(f) against recipients for any contract actions taken between the IFR publication date and the

reevaluation deadline or the date the recipient's respective UCP reevaluation process is complete, whichever occurs sooner.

After the reevaluation process described in § 26.111 is completed, good cause for termination will exist if a DBE loses its DBE certification because it is ineligible to receive DBE credit for the type of work required. See 49 CFR 26.53(viii). Furthermore, even if the DBE or ACDBE remains certified after the reevaluation process, good cause exists if the DBE or ACDBE was selected for a contract solely based on the race or sex of the firm owner.

Writing Personal Narratives

1. May an owner submitting the Personal Narrative (PN) cite personal experiences of discrimination or disadvantage that are tied to race or sex? (49 CFR 26.67(a) (social and economic disadvantage))

Yes. Owners should cite specific, individualized instances of discrimination or disadvantage that are tied to race or sex, provided that the claim of social and economic disadvantage is based strictly on the owner's individualized experiences and not on group-based presumptions.

Although the Department eliminated race- and sex-based presumptions of disadvantage, owners are not prohibited from describing personal experiences with specific instances of discrimination resulting in disadvantage. Under 49 CFR 26.67, an owner must demonstrate social and economic disadvantage through individualized proof of his or her own experiences and circumstances in American society, such as instances of economic hardship, social barriers, or denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to non-disadvantaged individuals with comparable qualifications.

A generalized claim of membership in a historically disadvantaged group fails to meet the individualized evidentiary showing under the regulation. For example, an owner's PN cannot simply state that minority-owned construction firms historically face systemic discrimination and barriers to accessing capital. The narrative must instead detail the owner's own unique personal experiences and specific instances of denied opportunities resulting from discrimination against the owner.

2. Should the PN span the full scope of the owner's life experiences related to social and economic disadvantage, from childhood through the present, including both the time before and after starting the business? (49 CFR 26.67(a) (social and economic disadvantage))

The PN need not span the entire life of the owner. The PN may discuss incidents and experiences of economic hardship, social barriers, and denied opportunities from any point in the owner's life within American society that impeded the owner's progress or success in education, employment, or business opportunities, including obtaining financing on terms available to non-disadvantaged individuals with comparable qualifications.

Owners may recount specific incidents of race or sex discrimination only if the claim of social and economic disadvantage is based strictly on the owner's individualized experiences and not on group-based presumptions. The PN should reflect a pattern of specific instances of discrimination and demonstrate that the disadvantage was chronic and substantial, not isolated or fleeting.

3. Is an owner required to provide formal complaints of discrimination or corroborating evidence?

No. An owner does not need to have filed a formal complaint of discrimination, nor is the owner required to provide independent corroborating evidence for every incident described in the PN. However, the owner must establish social and economic disadvantage by a preponderance of the evidence. The PN therefore must provide individualized evidence of the circumstances giving rise to the claimed disadvantage and explain how those circumstances caused actual economic harm. Where available, documents or other information that corroborate the owner's account, such as correspondence, records of denied opportunities, or formal complaints, may be considered and may strengthen the showing. The absence of independent corroborating documentation does not, by itself, require denial of a claim; however, an owner's generalized or conclusory assertion of discrimination or disadvantage, without sufficient individualized facts to establish the claimed discrimination and resulting economic harm, is not enough.

Evaluating Personal Narratives

4. How should a certifier evaluate the claims made in a PN? (49 CFR 26.9 (guidance and interpretations)) (49 CFR 26.67 (social and economic disadvantage)).

Certifiers must review each claim (*e.g.*, employment, business history) and make a decision based on a preponderance of the evidence. Because every owner presents unique facts and personalized experiences, certifiers must evaluate all presented information fully and objectively.

Certifiers must not enforce page limits, mandate topics, or impose any other limitations on an owner's PN outside of what is expressly permitted in the regulations, or the interpretations specifically stated in the Department's official guidance and appeal decisions.

5. Should certifiers rely solely on the amount of evidence provided? (49 CFR 26.67)

No. Certifiers should not rely solely on the *quantity* of examples an owner provides. Instead, they should focus on the *quality* of the evidence detailing the social and economic disadvantages or discrimination the owner experienced within American society.

6. How should certifiers consider the credibility of PN statements or declarations?

Certifiers should not automatically assume that an owner is lying. Sworn affidavits are not necessary because the Department eliminated requirements for notarized affidavits in 2024 in favor of unsworn declarations. While owners are not required to provide unsworn declarations, certifiers can and should continue to consider unsworn declarations from owners and witnesses

as evidence, provided those statements clearly establish an instance of social or economic disadvantage. Although corroboration of allegations of discrimination or disadvantage is not required, certifiers should evaluate the overall quality and credibility of the assertions in a PN.

7. Can a certifier disregard a claim of discriminatory conduct?

Yes. For example, a certifier may disregard a claim if the owner presents evidence of discriminatory conduct but fails to connect that conduct to a negative impact on their entry into or advancement in the business world.

Ultimately, the owner bears the burden of providing a PN that demonstrates, by a preponderance of the evidence (more likely than not), that the owner is socially and economically disadvantaged.

8. Must a certifier reconsider a disqualified PN if the initial decision was due to the owner detailing personal experiences with race or sex, or any other provision that received technical corrections or clarifications in the final rule? (49 CFR 26.67 (social and economic disadvantage)).

Yes.

9. To establish social and economic disadvantage through the PN, does a DBE owner have to meet all categories of economic hardship, social barriers, and denied opportunities described in 49 CFR 26.67(a)(1)? (49 CFR 26.67 (social and economic disadvantage)).

No. A DBE does not need to meet every category of economic hardship, social barriers, or denied opportunities in the PN. Under 49 CFR 26.67, a DBE owner must provide the certifier with a PN that establishes the existence of disadvantage by a preponderance of the evidence. The review process does not involve checking a box for every possible reevaluation category. Certifiers must evaluate all presented evidence qualitatively before making a decision based on a preponderance of the evidence. Considerations may include, but are not limited to:

Education: Factors such as unequal access, compared to non-disadvantaged individuals with comparable qualifications, to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of honors despite meeting requisite qualifications, and social patterns or pressures that discouraged the individual from pursuing a professional or business education.

Employment: Factors such as unequal treatment, compared to non-disadvantaged individuals with comparable qualifications, in hiring, promotions and other aspects of professional advancement, unequal pay and fringe benefits, and other terms and conditions of employment; retaliatory behavior by an employer or labor union; stereotyping about capability, and social patterns or pressures that channeled the individual into non-professional or non-business fields.

Business history: Factors such as unequal access to business opportunities and capital, compared to non-disadvantaged individuals with comparable qualifications, resulting in limited revenue growth, inability to build performance history, acquisition of credit or capital under commercially unfavorable circumstances (*e.g.*, requiring additional collateral), weakened capital accumulation, unequal treatment in opportunities for government contracts, denial of bonding despite meeting financial or industry thresholds, inability to bid prime contracts, limits on growth trajectory, delayed equipment purchase or project expansion, limits in access to pre-bid meetings and networking despite outreach to others or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

Other relevant evidence may be considered, but the incidents or experiences discussed in the narrative must *not* rely, in whole or in part, on presumptions regarding race or sex. The PN should describe who, what, where, why, when, and how the disadvantage occurred. However, a denial of an opportunity or unfavorable treatment alone, without additional information connecting the owner's ODF to the denial of an opportunity or unfavorable treatment, is not sufficient to demonstrate disadvantage.

Owners may provide additional documents and evidence to support their claims, but are not required to do so. However, certifiers should not deny firms solely due to their inability to provide supporting documentation. Depending on the circumstances and the length of time since the incident occurred, corroborating documentation may no longer be available.

10. What does “non-disadvantaged individuals with comparable qualifications” mean in 49 CFR 26.67 in reference to social and economic disadvantage? 49 CFR 26.67(a) and (b) (“non-disadvantaged individuals with comparable qualifications”)

The requirement serves as a comparison to prove that the owner experienced discrimination or was placed at a disadvantage.

Depending on the context of the PN, non-disadvantaged individuals with comparable qualifications may simply refer to a classmate, a former coworker, a peer, or another business owner who received more favorable treatment despite having comparable qualifications (*e.g.*, similar training, skills, or experience in the field).

11. What does “economic disadvantage in fact” mean in practice? (49 CFR 26.67(b) (economic disadvantage in fact))

Economic disadvantage in fact (EDIF) requires certifiers to conduct a broad assessment of the owner's financial situation to ensure they are in fact economically disadvantaged, even if the owner does not exceed the PNW cap.

The certifier should review the PN, personal net worth (PNW) statement, and any other relevant financial documents the owner provides to make a determination. The determination must be tied to facts in the record and involves an evaluation of the owner's overall lifestyle.

This analysis is not intended to be a speculative inquiry during reevaluation, and certifiers should only request additional information if the owner's submission suggests it is necessary.

12. Can certifiers allow owners to correct or update their PNs or PNW statements before making a final decision? (49 CFR 26.67 (a)(4) (socially and economically disadvantaged))

Yes. When reviewing a firm's documentation, certifiers must base their eligibility determinations on the evidence available at the time of the decision and must give "full effect to the 'curative measures' provisions" under 49 CFR 26.63(a)(5).

In practice, this means that, if a certifier identifies an issue or deficiency in an owner's PN or PNW statement, he or she may notify the firm of their concerns and give the owner time to attempt to remedy PN deficiencies. Owners are permitted to bolster their underlying documentation in a bona fide attempt to correct defects in their eligibility if their actions are consistent with the program's rules, and certifiers can offer general assistance and guidance to help the owner correct the record.

Document Submission & Application Logistics

13. Must the owner of a DBE firm undergoing a reevaluation submit a new PNW statement along with the PN? (49 CFR 26.111) (DBE reevaluation process); 49 CFR 26.67(a)(4) (socially and economically disadvantaged)

Yes. In seeking reevaluation of its certification under 49 CFR 26.111, the owner of a currently certified DBE firm must submit the PN along with the current PNW statement and any other financial information the owner considers relevant, in accordance with 49 CFR 26.67(a)(4).

14. May firms applying for a new DBE certification only submit the PN and PNW worth statements? (49 CFR 26.83) (procedures used by certifiers to make decisions)

No. The Uniform Certification Application (UCA) process still applies.

In addition to providing an owner's PN and a current personal net worth statement, new applicants must still meet all other certification standards outlined in 49 CFR part 26. This means firms are required to complete the UCA process described in 49 CFR 26.83 and submit all required program documentation.

The UCA is available on <https://www.transportation.gov/DBEFORMS>.

15. Will the PN and current PNW statement submitted to prove social and economic disadvantage be released to the public or competitors? (49 CFR 26.109) (rules governing information, confidentiality, cooperation, and intimidation or retaliation)

No. The contents of PNs and PNW statements are confidential. Under 49 CFR 26.109(a)(2), recipients are prohibited from releasing any information reasonably construed as confidential business information—which explicitly includes applications for DBE certification and supporting information—to any third party without the written consent of the submitting firm.

This prohibition applies notwithstanding any other provision of Federal or State law, including State right to know laws or the Freedom of Information Act. However, certifiers must transmit this information to the Department in the event of a certification appeal under 49 CFR 26.89, or to another UCP if the firm applies for interstate certification under 49 CFR 26.85.

Reevaluation Process, Deadlines, & Processing

16. Can a recipient be penalized if they choose not to reevaluate their DBEs under 49 CFR 26.111?

Yes. A recipient's failure to implement the reevaluation process at 49 CFR 26.111 could trigger a finding of noncompliance with the DBE regulations and subject the recipient to the loss of Federal funds if the noncompliance is not corrected. *See* 49 CFR 26.21(c), 26.103, 26.105.

17. What are the deadlines for completing the reevaluation process? (49 CFR 26.111) (the DBE reevaluation process))

Under the final rule, the UCP for the Jurisdiction of Original Certification (JOC) must complete their reevaluations no later than December 24, 2026, 90 days after the final rule's effective date.

A one-time 90-day extension to a particular UCP may be granted by the Department's Office of Small and Disadvantaged Business Utilization (OSDBU) based upon special circumstances.

When submitting an extension request, the UCP should still make an initial submission to DOT that identifies:

- The number of firms maintaining certification;
- The number of firms removed for ineligibility;
- The number of non-responsive firms as of the date of the extension request;
- The number of firms that submitted timely reevaluation applications and received a timely evaluation from the UCP; and
- The number of firms whose reevaluation applications have been submitted but are still pending review by the UCP, broken down by timely and untimely submissions.

These figures should be updated when the UCP notifies the Department that its reevaluation is complete.

The JOC must issue a notice of nonresponse to any DBE that fails to submit its PN and PNW statement before the certifier notifies the Department that its reevaluation process is complete. In this notice, the certifier must explain that the firm has until March 24, 2027, 180 days after the final rule's effective date, to submit its reevaluation package, otherwise the UCP will issue a Notice of Disqualification (NOD) automatically disqualifying the firm without further administrative proceedings.

18. What information must the UCP provide to the Department when it completes the reevaluation process? (49 CFR 26.111 (the DBE reevaluation process))

Under 49 CFR 26.111(c)(2), each UCP must promptly email the Department's OSDBU at DBEreevaluations@dot.gov. The email must clearly state that the reevaluation process is complete for all UCP members, not just a subset of certifiers, and provide the following data:

- (1) The number of DBEs that remain certified following the reevaluation, including a certification that the UCP is the JOC that certified the DBEs.
- (2) The number of DBEs disqualified because the owners failed to qualify as socially and economically disadvantaged under the requirements of § 26.67.
- (3) The number of DBEs that the UCP did not reevaluate because the owner failed to respond to the notice requiring the submission of PNs and PNW statements.

19. If a UCP notified the Department that it completed the 49 CFR 26.111 reevaluation process prior to the publication of the final rule, must the UCP provide a second notification that includes the information required by 49 CFR 26.111(c)(2)?

Yes. This second notification requirement, however, does not invalidate actions taken by a recipient following the initial notice. DBE goals calculated from the first reevaluation remain valid and do not need to be recalculated. In addition, recipients may count DBE participation toward these goals—subject to approval by the relevant Operating Administration (OA).

20. Does a UCP have discretion to complete the reevaluation process for ACDBEs first and ensure that the ACDBE program is reinstated to start setting goals and count participation, and subsequently focus on completing the reevaluation of the DBEs thereafter?

Yes. UCPs should use their established procedures for determining the order for completing reevaluations. However, the UCP must clearly indicate in its notification letter to the Department whether they have completed the reevaluation process for ACDBEs or for DBEs, and if the other program's reevaluations are still ongoing.

21. How does the requirement for an annual Declaration of Eligibility relate to the requirement for submission of a PN as part of a reevaluation? (49 CFR 26.83(j))

The PN is required as part of the reevaluation process. It is unrelated to the annual Declaration of Eligibility (DOE) submittal requirements.

DOEs received during the reevaluation process should continue to be processed in the normal course of business.

22. How long does a certifier wait to receive required reevaluation documents from firms? (49 CFR 26.111 (the DBE reevaluation process))

The certifier must wait until December 24, 2026, 90 days after the final rule's effective date, for the firm to submit the required documents. Any firm that fails to submit its PN and PNW statement by the date the UCP completes its reevaluation process must be issued a written notice of nonresponse. If the firm fails to submit the documentation within the 180-day period (by March 24, 2027), the UCP must issue a Notice of Decision (NOD) stating that the firm has been disqualified due to its failure to provide the required § 26.67 PN and PNW statement.

Note: Firms choosing not to undergo the mandatory reevaluation process may voluntarily withdraw their DBE certification.

23. What is the Department's role in the reevaluation process? (49 CFR 26.111 (the DBE reevaluation process))

Each UCP is responsible for carrying out the reevaluation of currently certified DBEs and ACDBEs for which the UCP served as the JOC. The Department is available to provide technical assistance as necessary.

24. May certifiers pause or delay processing DBE/ACDBE UCAs from new applicants during the reevaluation period? (49 CFR 26.83 (procedures used by certifiers to make decisions))

No. Under 49 CFR 26.83(l)(1), certifiers must issue a final eligibility decision within 90 days of receiving all information required from the firm. While a certifier may extend this time period once for individual firms, for no more than an additional 30 days, the regulation provides no exception for delays based on administrative convenience, staff shortages, or other reevaluation-related reasons. UCPs should make sure they have adequate resources to balance the concurrent requirements. Firms must use the current UCA posted on the Department's website, <https://www.transportation.gov/DBEFORMS>. 49 CFR 26.83(c)(2).

Under 49 CFR 26.83(l)(1), the Department, or the concerned Operating Administration (*i.e.*, FTA, FAA, or FHWA) may take enforcement action against an agency for noncompliance.

25. Should certifiers pause or delay initiating decertification proceedings under 49 CFR 26.87 during the reevaluation period? (49 CFR 26.87 decertification)

No. certifiers should not delay decertification of a DBE for reasons such as failure to file a timely DOE or information negating their ability to meet business size, ownership, or control criteria.

26. Should UCPs pause or delay accepting DOEs during the reevaluation period? (49 CFR 26.83 (procedures used by certifiers to make decisions))

No. Certifiers should continue to accept DOEs and firms should use the current DOE, available at <https://www.transportation.gov/DBEFORMS>.

Interstate certification

27. Is the JOC responsible for reevaluating a firm certified in multiple states?

Yes. The UCP in the JOC for a DBE is responsible for reevaluating the firm. The firm provides its PN and PNW only to that UCP. Other states in which the firm has been certified through the interstate certification (IC) process do not reevaluate the firm.

28. During the reevaluation process, may UCPs remove DBEs because the firm was originally certified in another jurisdiction?

No. UCPs must not remove out-of-State firms from their directories. Once a certifier has certified a firm, the DBE remains certified unless and until the certifier removes certification in whole or in part (*i.e.*, NAICS code removal), through formal regulatory procedures set forth in 49 CFR 26.87, 26.83(h), and 26.85(h). The firm will lose certification if the DBE's JOC removes it during the reevaluation period.

However, the UCP should take steps to prevent confusion in goal setting and uncertainty about which firms may be eligible to meet goals.

For example, a UCP might use a symbol, such as an asterisk, to denote out-of-State firms which have not provided documentation of their eligibility from their JOC. Alternatively, a UCP might move firms who have not provided such documentation to a nonpublic-facing part of their directory until the proof of reevaluation is provided. The UCP must immediately put the firm back into the directory without an asterisk, or on the public-facing side of the directory, once the firm provides proof of its JOC reevaluation. The UCP must not request any other documentation from the JOC or the firm.

29. Once a firm is reevaluated by its JOC during the reevaluation process, must it “reapply” for interstate certification in other States where it used to be certified?

No. The firm should send a copy of a decision letter from its JOC, or a screenshot of its entry in the JOC UCP's directory, to the other States in which it has been certified. The other UCPs then denote the firm as active in their directories.

The regulation explicitly prohibits a certifier from requiring a currently certified DBE to reapply for certification, to renew its certification, to undergo a recertification, or to fulfill any functionally equivalent requirement. 49 CFR 26.83(h)(2).

30. How does a UCP confirm that a DBE remains eligible after a reevaluation by its JOC?

To confirm the DBE's certification, the UCP must ensure that the DBE's name appears in the JOC's UCP statewide directory and that an annotation states that the JOC has reevaluated the firm. Alternatively, the firm may send a copy of its post-reevaluation decision letter to other UCPs.

31. What must a UCP do if it disqualifies a DBE or ACDBE during the reevaluation process that is certified in multiple jurisdictions?

The UCP of the JOC must email a copy of its decision to the other jurisdictions within three business days.

Directories

32. Should recipients take down their UCP directories until their respective UCP completes the reevaluation process (and certifies qualified DBEs)? (§ 26.31 What information must a UCP include in its DBE/ACDBE directory?) (added 12/01/2025)

No. The regulation does not grant UCPs the authority to remove UCP directories from their website. However, the UCP's directory should include a prominent disclaimer indicating that DBE participation will not count toward DBE goals until the UCP has completed the reevaluation process.

UCP Decisions and Appeals

33. Can a UCP simply remove all certified DBEs without completing the reevaluation process? (49 CFR 26.67 (socially and economically disadvantaged); (49 CFR 26.111 (the DBE reevaluation process))

No. The final rule requires UCPs to identify each currently certified DBE and provide each identified firm with the opportunity to submit documentation demonstrating social and economic disadvantage. 49 CFR 26.67, 26.111.

34. What must the written decision include if the certifier disqualifies the firm?

Under 49 CFR 26.111(a)(4), the certifier must provide the firm with a detailed Notice of Decision (NOD) explaining the reasons for the adverse disposition, specifically referencing the evidence in the record supporting each reason. Instructions on filing an appeal are found on the Departmental Office of Civil Rights' webpage, available at <https://www.transportation.gov/dbeappeal>. See also 49 CFR 26.86(a).

35. Can a firm that is disqualified through the reevaluation process appeal the decision to the Department? (49 CFR 26.89 (appeals to the Department))

Yes. A firm that is disqualified under the reevaluation procedures set forth in 49 CFR 26.111 is entitled to appeal the removal to the Department under the procedures set forth in 49 CFR 26.89.

36. Does the final rule impact firms recently denied certification? (49 CFR 26.86 (decision letters))

No. The final rule does not change 49 CFR 26.86(c). Under this provision, each UCP is authorized to establish a waiting period of no more than 12 months before a firm denied certification may reapply for certification. This waiting period continues to run from the date of the denial, even while the UCP's reevaluation process proceeds. Firms who reapply after the waiting period expires must comply with the revised certification standards. The same requirement applies to firms that submitted their applications prior to the final rule's effective date.

37. If a DBE successfully completes the reevaluation process, will its certification anniversary remain the date of its original certification or the date it is reevaluated under the new certification standards and procedures? (49 CFR 26.83(j))

The certification anniversary of a DBE reevaluated under the reevaluation process at 49 CFR 26.111 will continue to be the date of the DBE's original certification under the DBE certification standards in place prior to October 3, 2025.

ANCs, Indian Tribes, Native Hawaiian Organizations (NHOs)

38. Are Alaska Native Corporations (ANCs) required to participate in the reevaluation process of § 26.111? (49 CFR 26.63(c) (Indian Tribes, NHOs, and ANCs))

No. ANCs and their subsidiaries are exempted from these requirements because of their statutory treatment under the Alaska Native Claims Settlement Act and because they are owned by entities rather than individuals.

ANCs seeking certification under the final rule must still comply with certification requirements under 49 CFR 26.63(c)(2).

Officials representing ANCs do not need to submit PNs or PNW statements.

39. Are businesses owned by Indian Tribes and NHOs required to participate in the reevaluation process of § 26.111? (49 CFR 26.63(c) (Indian Tribes, NHOs, and ANCs))

No. Such a firm is owned by a Tribe or NHO as an entity, rather than by individuals. Officials representing such firms are not required to submit PNs.

When seeking certification, such a firm must demonstrate that the Tribe or NHO that owns the business is legally recognized as a Tribe or NHO under State or Federal law.

Also, Tribal- or NHO-owned firms seeking certification must meet other applicable certification requirements (*i.e.*, business size, control). However, officials controlling the firm must submit PNW statements in certain circumstances, like certification reviews, changes in ownership, or when filing a UCA.

Businesses owned by Native Americans and Native Hawaiians as individuals are distinct from being owned by a Tribe or NHO as an entity, and must pursue the reevaluation process like all other individually owned businesses. The owners must submit a PN and demonstrate both social and economic disadvantage.

C. Goal Setting and Counting

1. After a UCP completes the reevaluation process, must recipients recalculate overall goal methodologies?

Yes. All existing goal methodologies were based on availability figures that are no longer accurate since the publication of the Interim Final Rule on October 3, 2025.

However, if a recipient's current triennial goal period ends in FY2026, the recipient may choose to use only DBE-neutral measures for the remainder of the fiscal year and focus efforts on developing the FY2027-2029 goal methodology. Recipients choosing this approach must only use DBE-neutral measures through the end of FY2026. An updated overall goal methodology is required in order for recipients to set DBE-conscious contract goals.

2. After a UCP completes the reevaluation process, can recipients immediately begin assigning DBE-conscious goals to new contracts?

No. Before assigning a DBE goal to a contract, the recipient must create and submit a new overall goal for the relevant period. As with the prior rule, assigning DBE-conscious goals is a tool recipients may use to help meet their overall goal. Without a compliant overall goal on record, DBE-conscious contract goals may not be used.

3. May recipients look to relevant sources to supplement the DBE directory?

Yes. Recipients who evaluate availability by comparing DBE directory information with Census Bureau data may continue to supplement the DBE directory by looking to relevant sources that reveal firms who are potentially eligible for DBE certification.

Sources may include, but are not limited to, local or State small business directories. You must ensure the businesses are relevant to the type of work expected to be part of the upcoming projects. To avoid double counting, you must ensure that a business does not appear on your list more than once.

4. How should recipients update goal methodologies where one or more fiscal years were subject to the prior rule?

Recipients may not recalculate the number of available DBEs from past fiscal years using newly available figures. Goals are forward-looking documents and cannot be established or modified in retrospect. Instead, overall goals should be revised to address only future Federal Fiscal Years (FFY).

The FFY in which the UCP completes the reevaluation process is the cutoff point. Recipients should submit new goal methodologies only for the remaining future years. For example, if a UCP completed the process in FFY2026, recipients with a goal period of FFY2024-2026 would not submit a revised goal. Recipients with a goal period of FFY2025-2027 would submit a one-year goal covering FFY2027. Recipients with a goal period of FFY2026-2028 would submit a two-year goal covering FFY2027-2028. Recipients should contact the applicable Operating Administration with logistical questions.

Recipients should not set or update overall goals for the FFY in which the UCP completes the reevaluation process, and no DBE contract goals may be established for the remainder of that FFY.

When updating goal methodologies, recipients may not use disparity studies that were based on presumptions regarding race or sex or are otherwise based on generalized assertions of systemic discrimination.

5. The IFR removed the use of race- and sex-based presumptions in determining DBE/ACDBE eligibility and removes the collection of data based on race or sex. With these changes, why does the Final Rule retain the use of disparity studies as an option for setting overall annual DBE goals?

Because the IFR removed the race- and sex-based presumptions for determining eligibility of DBEs, measuring disparities between the use of firms owned by members of racial groups or women and their availability in the market is no longer relevant. Nonetheless, some recipients may find methodologies or data contained in disparity studies or availability studies useful in determining a base figure for the relative availability of disadvantaged businesses in the market as part of setting an overall annual DBE goal. Under the final rule, however, such studies may be used only for purposes consistent with the race- and sex-neutral goal-setting framework. They may not rely on race- or sex-based presumptions or generalized assertions of systemic discrimination. Rather, any study used for goal setting should focus on the availability, utilization, and capacity of DBEs relative to other firms in the relevant market. The purpose of any disparity study used for the DBE or ACDBE program is for identifying disparities in using small businesses owned by economically and socially disadvantaged individuals, without considering the race- or sex of the business owners.

Recipients are not required to use disparity studies in setting an overall DBE goal, but DOT did not wish to foreclose use of a disparity study, consistent with the limitations described above, as a basis for establishing an overall DBE goal. If a recipient chooses to use a disparity study, the

study must provide a detailed capacity analysis to reflect more accurately the ability of DBEs to carry out federally assisted contracts.

DOT will not approve the use of DOT funds to undertake a disparity study until after the UCP in a recipient's jurisdiction has completed the reevaluation process at 49 CFR 26.111.

6. May recipients make Step 2 adjustments based on past participation?

No. Past participation figures represent participation of firms that were certified under the previous rule when the presumption of social and economic disadvantage based on sex or race existed. Their participation rates must not be used to inform future participation by firms that are certified under the eligibility criteria of the final rule.

7. Can recipients set their own Small Business Enterprise program goals on Federal-aid contracts?

Yes. Recipients may establish Small Business Enterprise (SBE) goals on Federal-aid contracts, provided the recipients do not use race- or sex-based presumptions or preferences for SBE program participation. To the extent that firms are certified as both DBEs under the Federal DBE program and SBEs under the State program, establishing SBE goals on Federal-aid contracts could be a way to obtain DBE-neutral participation on Federal-aid contracts.

A recipient should not set both SBE goals and DBE goals on the same Federal-aid contract. Recipients must continue to use good faith efforts to achieve their overall DBE goal. If a recipient is not able to meet its overall DBE goal through DBE-neutral means, it must set DBE goals on contracts in a good faith effort to meet its overall DBE goal.

8. Should a recipient belonging to a Unified Certification Program (UCP) that has *not* completed its reevaluation process count the participation of a DBE that *has* been reevaluated by its JOC?

No, 49 CFR 26.55(i) prohibits a recipient from counting the firm's participation towards an overall or contract goal until the UCP, which the recipient participates in, completes the reevaluation process required by 49 CFR 26.111. The DBE's certification status does not change this requirement.

9. How should recipients resume counting DBE and ACDBE participation after their jurisdiction's UCP completes the reevaluation process?

Recipients may begin counting DBE participation starting from the date the UCP notifies the Department that the reevaluation process required by 49 CFR 26.111 has been completed.

Recipients may begin counting ACDBE participation starting from the date the UCP notifies the Department that the reevaluation process required by 49 CFR 23.81 has been completed.

DBE or ACDBE firms that were participating on existing contracts prior to the publication of the IFR on October 3, 2025, and who remain certified after the reevaluation process is completed, may be counted again beginning the date the UCP notifies the Department. No participation may be counted for the period between October 3, 2025 and the date the relevant UCP notifies the Department that the reevaluation process is complete.

In order to resume counting DBE and ACDBE participation, recipients must also resume monitoring contracts and conducting commercially useful function reviews of participating DBEs and ACDBEs.

10. Can recipients resume enforcing DBE or ACDBE contract goals on agreements executed prior to the IFR?

No. Contract goals established prior to the publication of the Interim Final Rule on October 3, 2025 are legally unenforceable because they were based on availability figures that are no longer accurate.

Participation can be counted toward DBE goals once the UCP in the recipient's jurisdiction completes the reevaluation process, and termination and substitution procedures are applicable after the recipient jurisdiction's reevaluation process is complete. However, recipients cannot require contractors or concessionaires to make good faith efforts to address any shortfall in a contract goal.