



# FINANCIAL ASSISTANCE LETTER

This Financial Assistance Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA

**Subject: Implementation of Division D, Titles III and V, and Division E, Title VII of the Consolidated Appropriations Act, 2014, Pub. L. No. 113-76.**

**References:**

Consolidated Appropriations Act, 2014,  
Pub.L. No. 113-76

Division D, Title III, Section  
301(a) and Title V, Sections  
501, 502, 503  
Division E, Title VII, Sections  
724 and 742

**When is this Financial Assistance Letter (FAL) effective?**

The statutory provisions addressed in this FAL were effective as of the enactment date of the Consolidated Appropriations Act, 2014, enacted January 17, 2014.

**When does this FAL expire?**

This FAL is in effect for FY14. This FAL and all previous FALs on appropriations will be archived after a new FAL on appropriations is issued. Generally, the guidance provided in the appropriation FALs will remain in effect when obligating dollars appropriated under that applicable appropriation act's FAL. Please request assistance from your local counsel for applicability after the end of an FY.

**Who is the point of contact?**

For DOE, contact Richard Bonnell of the Contract and Financial Assistance Policy Division, Office of Policy in the Office of Acquisition and Project Management at (202) 287-1747 or at richard.bonnell@hq.doe.gov. For NNSA, contact NNSA at (505) 845-4337. For conference spending questions, contact Jason Taylor at (202) 287-1560 or at jason.taylor@hq.doe.gov.

**Who is the intended audience?**

Department of Energy (DOE) and National Nuclear Security Administration (NNSA) Contracting Officers.

**What is the purpose?**

The purpose of this FAL is to provide information and guidance regarding the Department of Energy's (DOE or Department) implementation of Division D, Title III and Title V, and Division E, Title VII of the Consolidated Appropriations Act, 2014, Pub. L. No. 113-76 (2014 Act).

**What types of actions are affected by this FAL?**

This FAL applies to all DOE and NNSA funding opportunity announcements and financial assistance actions **funded with fiscal year 2014 appropriated funds**. For funding opportunity announcements and financial assistance actions funded in whole or in part with previous fiscal year funds please refer to the corresponding FAL for appropriate guidance. For example, if an award is made with fiscal year 2013 appropriated funds please see FAL 2013-04 for appropriate guidance.

**NOTE:**

- Sections 301(b) and 301(c) of the 2014 Act which requires advance notification to Congress for certain financial assistance actions are addressed in a separate Financial Assistance Letter (FAL 2014-02).
- Section 316 Lighting Efficiency Standards of FAL 2013-04 and FAL 2012-02 remains in effect for all DOE **grants** that are in excess of \$1,000,000 and funded using fiscal year 2013 or 2012 appropriated funds. See FAL 2013-04 or 2012-02 for additional guidance.
- Section 504 Felony Criminal Violations and Section 505 Unpaid Federal Tax Liabilities of FAL 2013-04 and FAL 2012-02 remains in effect for all new DOE grant, cooperative agreement, loan, and loan guarantee awards, and renewal or continuation awards to corporations that are funded using fiscal year 2013 or 2012 appropriated funds. See FAL 2013-04 or 2012-02 for the appropriate Representations and Assurances required and any additional guidance needed.

**What guidance is included in this FAL?**

**Consolidated Appropriations Act, 2014**

- I. Section 301(a) Unfunded Requests for Proposals**
- II. Section 501 Lobbying Restrictions**
- III. Section 502 Felony Criminal Violations**
- IV. Section 503 Unpaid Federal Tax Liability**
- V. Section 724 Federal Funds Source Information**
- VI. Section 742 Reporting on Conference Spending**

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**I. Section 301(a) UNFUNDED REQUESTS FOR PROPOSALS**

**What is the law?**

No appropriation, funds, or authority made available by this title for the Department of Energy shall be used to initiate or resume any program, project, or activity or to prepare or initiate Requests For Proposals or similar arrangements (including Requests for Quotations, Requests for Information, and Funding Opportunity Announcements) for a program, project, or activity if the program, project, or activity has not been funded by Congress.

**What is the scope of this requirement?**

Section 301(a) of Division D of the 2014 Act requires that funds appropriated by the 2014 Act not be used to prepare, initiate or publicize Requests for Information (RFI) and Funding Opportunity Announcements (FOA) for any program, project or activity if the program, project or activity has not been funded by Congress.

**What procedures need to be followed to implement this requirement?**

Before preparing, initiating or publicizing RFIs or FOAs in support of a program, project or activity, the Contracting Officer shall work with the program office and the program budget office officials to ensure the program, project or activity has been funded by Congress.

**II. Section 501 LOBBYING RESTRICTIONS**

**What is the law?**

None of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913.

**What is the scope of this requirement?**

Section 501 of Division D of the 2014 Act applies to all solicitations, funding opportunity announcements and awards of DOE financial assistance to which funds appropriated under the 2014 Act are obligated.

**What procedures need to be followed to implement this requirement?**

Contracting Officers shall ensure that the standard award term below, entitled “LOBBYING RESTRICTIONS”, is incorporated into all solicitations, FOAs and awards of financial assistance that use funds appropriated by the 2014 Act:

***LOBBYING RESTRICTIONS (March 2012)***

*By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.*

**III. Section 502 FELONY CRIMINAL VIOLATIONS****What is the law?**

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

**What is the scope of this requirement?**

Section 502 of Division D of the 2014 Act applies to **all new** DOE grant, cooperative agreement, loan, and loan guarantee awards, **and renewal or continuation** awards **to corporations** that are funded by the 2014 Act. This requirement includes no dollar value threshold and does not flow down to subawardees (e.g., subrecipients, subgrantees, subcontractors).

**What procedures need to be followed to implement this requirement?**

Contracting Officers shall ensure that the “**Corporate Felony Conviction and Federal Tax Liability Representations (March 2014)**” (Appendix A) is incorporated into all new financial assistance solicitations and FOAs that will result in grant and/or cooperative agreement awards that are obligated with funds appropriated by the 2014 Act.

The Contracting Officer shall ensure that the corporation's representation is current at award by including the "**Corporate Felony Conviction and Federal Tax Liability Assurances (March 2014)**" (Appendix B) in new and renewal/continuation awards to corporations that are obligated with funds appropriated by the 2014 Act.

#### **IV. Section 503 UNPAID FEDERAL TAX LIABILITY**

##### **What is the law?**

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

##### **What is the scope of this requirement?**

Section 503 of Division D of the 2014 Act applies to **all new** DOE grant, cooperative agreement, loan, and loan guarantee awards, **and renewal or continuation** awards to corporations that are funded by the 2014 Act. This requirement includes no dollar value threshold and does not flow down to subawardees (e.g., subrecipients, subgrantees, subcontractors).

##### **What procedures need to be followed to implement this requirement?**

Contracting Officers shall ensure that the "**Corporate Felony Conviction and Federal Tax Liability Representations (March 2014)**" (Appendix A) is incorporated into all new financial assistance solicitations and FOAs that will result in grant and/or cooperative agreement awards that are obligated with funds appropriated by the 2014 Act.

The Contracting Officer shall ensure that the corporation's representation is current at award by including the "**Corporate Felony Conviction and Federal Tax Liability Assurances (March 2014)**" (Appendix B) in new and renewal/continuation awards to corporations that are obligated with funds appropriated by the 2014 Act.

#### **FOR SECTIONS 502 and 503:**

A **Corporation** includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States [but not foreign corporations]. It includes both for-profit and non-profit organizations.

If the applicant (corporation) makes an affirmative response to the representation (it is a corporation with felony convictions in the past 24 months and/or is a corporation with an unpaid Federal tax liability), the awarding official (e.g., the contracting officer or grants officer) shall consult with the DOE Suspension and Debarment Official (SDO) to determine what, if any, steps have been taken by that official, or by another agency's SDO. The awarding official **shall not** make an award to the corporation that has responded affirmatively unless and until **the SDO** has: **(1)** considered suspension or debarment of the corporation **and (2)** has made a written determination that further action is not necessary to protect the interests of the government. The agency may determine whether it is appropriate to proceed with making awards to other applicants prior to receiving a definitive resolution from the SDO. The SDO, upon being informed by the awarding official of an affirmative response in a representation, could review any determination that has already been made, and independently adopt it as appropriate, without having to conduct a new investigation. If the funds are coming from another agency's appropriations, the awarding official must confer with the other agency which must consider suspension or debarment and conclude that suspension or debarment is not necessary before the awarding official can move forward.

The awarding official should notify and confer with the SDO to discuss how much time the SDO will need to make a determination. If the agency determines that the award date cannot be deferred for the period required for the SDO to make the debarment or suspension determination, the applicant shall be found ineligible for award based on the statute's prohibition of an agency entering into an award with that entity until a determination has been made. The awarding official may make an award to the next applicant that is in line to receive an award. An agency's decision to make an award to the applicant that is next in line to receive an award does not lessen the agency's obligation to continue working to make a determination regarding whether it is necessary to suspend or debar the initial applicant in order to protect the government's interest.

Note: A determination of ineligibility for award based on a statutory prohibition on the use of appropriated funds is not the same as a statutory debarment. In the case of a statutory debarment, the corporation would be automatically debarred and listed on EPLS ; here, by contrast, a corporation would not be listed on EPLS unless the SDO took action to suspend or debar the corporation in accordance with the due process requirements of FAR Subpart 9.4 or 2 CFR 180. In addition, a determination of ineligibility is not the same as a non-responsibility determination by a contracting officer under FAR 9.104. In the former case, the contracting officer is making a determination that the agency lacks funds to make the award in light of the statutory restriction. In the latter case, the contracting officer would be determining that the offeror lacks the requisite business integrity and ethics – or other standards which a contractor must possess, such as financial capability and a satisfactory performance record – to perform work for the government notwithstanding the availability of funds.

**V. Section 724 FEDERAL FUNDS SOURCE INFORMATION****What is the law?**

Any request for proposals, solicitations, grant application, form, notification, press release, or other publications involving the distribution of Federal funds shall indicate the agency providing the funds, the Catalog of Federal Domestic Assistance Number, as applicable, and the amount provided: *Provided*, That this provision shall apply to direct payments, formula funds, and grants received by a State receiving Federal funds.

**What is the scope of this requirement?**

Section 724 of Division E of the 2014 Act requires the Federal forms that are used in distributing Federal funds to a State must indicate the agency providing the funds, the Federal Domestic Assistance Number, and the amount provided.

**What procedures need to be followed to implement this requirement?**

FOAs, grant applications, Federal forms, notifications, DOE press releases, or other DOE publications involving the distribution of Federal funds to a State through direct payment, formula funds, or grants, that are obligated with funds appropriated by the 2014 Act shall indicate DOE as the agency providing the funds, the Catalog of Federal Domestic Assistance Number of the DOE program, as applicable, and the estimated amount of funds DOE provided to the State(s).

**VI. Section 742 REPORTING ON CONFERENCE SPENDING****What is the law?**

(a) The head of any Executive branch department, agency, board, commission, or office funded by this or any other appropriations Act shall submit annual reports to the Inspector General or senior ethics official for any entity without an Inspector General, regarding the costs and contracting procedures related to each conference held by any such department, agency, board, commission, or office during fiscal year 2014 for which the cost to the United States Government was more than \$100,000.

(b) Each report submitted shall include, for each conference described in subsection (a) held during the applicable period--

- (1) a description of its purpose;
- (2) the number of participants attending;
- (3) a detailed statement of the costs to the United States Government, including--
  - (A) the cost of any food or beverages;

- (B) the cost of any audio-visual services;
- (C) the cost of employee or contractor travel to and from the conference; and
- (D) a discussion of the methodology used to determine which costs relate to the conference; and

- (4) a description of the contracting procedures used including--
  - (A) whether contracts were awarded on a competitive basis; and
  - (B) a discussion of any cost comparison conducted by the departmental component or office in evaluating potential contractors for the conference.

(c) Within 15 days of the date of a conference held by any Executive branch department, agency, board, commission, or office funded by this or any other appropriations Act during fiscal year 2014 for which the cost to the United States Government was more than \$20,000, the head of any such department, agency, board, commission, or office shall notify the Inspector General or senior ethics official for any entity without an Inspector General, of the date, location, and number of employees attending such conference.

(d) A grant or contract funded by amounts appropriated by this or any other appropriations Act to an Executive branch agency may not be used for the purpose of defraying the costs of a conference described in subsection (c) that is not directly and programmatically related to the purpose for which the grant or contract was awarded, such as a conference held in connection with planning, training, assessment, review, or other routine purposes related to a project funded by the grant or contract.

(e) None of the funds made available in this or any other appropriations Act may be used for travel and conference activities that are not in compliance with Office of Management and Budget Memorandum M-12-12 dated May 11, 2012.

**What is the scope of this requirement?**

Section 742 of Division E of the 2014 Act applies to all solicitations, funding opportunity announcements and awards of financial assistance or contracts funded by the 2014 Act, or any other appropriations act during fiscal year 2014.

**What procedures need to be followed to implement this requirement?**

Contracting Officers shall ensure that the “**Conference Spending (April 2014)**” term is incorporated into all new financial assistance solicitations and FOAs that will result in financial assistance awards as well as new financial assistance awards that are obligated with funds appropriated by the 2104 Act or any other appropriations act during fiscal year 2014. Contracting Officers shall also ensure that financial assistance awards are not made or amended to circumvent the requirements for approval of DOE conferences.



**Conference Spending (March 2014)**

The recipient shall not expend funds for the purpose of defraying the cost to the United States Government of a conference held by any Executive branch department, agency, board, commission, or office funded by FY2013 or future year appropriations for which the cost to the United States Government was more than \$20,000, or circumventing the required notification by the head of any such Executive Branch department, agency, board, commission, or office to the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such conference that is not directly and programmatically related to the purpose for which the grant or cooperative agreement was awarded.

**Appendix A**

Insert the following language in FOAs under Section VI - Award Administration Information, Special Terms and Conditions:

**Corporate Felony Conviction and Federal Tax Liability Representations (March 2014)**

In submitting an application in response to this FOA the Applicant represents that:

- (1) It is **not** a corporation that has been convicted of a felony criminal violation under any Federal law within the preceding 24 months,
  
- (3) It is **not** a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

For purposes of these representations the following definitions apply:

A Corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States [but not foreign corporations]. It includes both for-profit and non-profit organizations.

## Appendix B

Insert the following language in the Special Terms and Conditions of new and renewal/continuation awards with corporations:

### **Corporate Felony Conviction and Federal Tax Liability Assurances (March 2014)**

By entering into this agreement, the undersigned attests that *[insert corporation name]* **has not been convicted** of a felony criminal violation under Federal law in the 24 months preceding the date of signature.

The undersigned further attests that *[insert corporation name]* **does not have any unpaid Federal tax liability** that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

For purposes of these assurances, the following definitions apply:

A Corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States [but not foreign corporations]. It includes both for-profit and non-profit organizations.