

## **FAQ on Guidance for Submitting Requests for Approval of Encumbrance**

Background:

As set forth in Term 16 of the Smart Grid Investment Grant Agreement, “Consistent with the 10 C.F.R. §§ 600.132(a), 600.134(c), and 600.321(b)(2), a recipient may request that the DOE contracting officer consider approving encumbrance of real property and equipment purchased in whole or in part with Federal funds under the award.”

This FAQ is to provide guidance on making a request for encumbrance.

### **Submission to the Contracting Officer**

Each request for approval of encumbrance of real property or equipment must provide the following:

#### **I. Summary**

A written narrative summarizing the nature of the request, including a description of the real property or equipment that is the subject of the request and the rationale in support of the request.

#### **II. Representation**

A written representation that contains a narrative summarizing the financing agreement(s) it has in place that necessitates the request for encumbrance.

The written representation shall provide sufficient details of your financing agreement(s) from its financing documents (Note: **Do not provide the actual financing documents. Proprietary or confidential commercial or financial information is not being sought by DOE. If such information must be submitted to support your request please add the following restricted rights legend to each line or paragraph to the effect, “The following contains proprietary information that (insert your name) requests not be released to persons outside the Government, except for the purposes of review and evaluation.”**) including:

1. A description of the financing agreement(s), including, but not limited to, the nature, and applicable priority position to all affected assets or other valuable interests.
  - Regarding representation of the nature of the agreement(s), provide, e.g., that current priority holders have superior rights in after-acquired assets and the parameters of those agreement(s)
  - State whether you anticipate future refinancing, restructuring, successors, etc., If future refinancing, restructuring, successors is anticipated make a statement to positively affirm you desire to transfer the Contracting Officer’s approval to amended, modified, replaced, renewed, or supplemented financing arrangements.

## **Questions and Answers for the Smart Grid Investment Grant Program**

2. The names of the parties to the financing agreement(s), and the applicable priority positions established by the agreement(s) held by those parties.
3. The date(s) of the financing agreement(s).
4. Acknowledge that this request is only for the Smart Grid Investment Grant award, (fill-in grant number).

### **III. Signature**

The request for approval of encumbrance of real property or equipment shall be signed by a person authorized to bind your organization.

### **IV. Approval Process**

Under approvals the following text shall be included:

“DOE hereby permits the Recipient to encumber, mortgage, pledge or grant a lien or security interest in all equipment and real property, wherever located, acquired by the Recipient in whole or in part with DOE grant funds in connection with their SGIG Project.

DOE’s interest as provided for in 10 CFR §§ 600.132, 134, 231, 232 and 321 and any lien or security interest pursuant to such property interest, in each case, shall be subordinate to the rights and interests of the Creditors, Mortgage-holders, Trustees, Bondholder’s, etc. listed above arising pursuant to the above listed Financing Arrangements, as such financing arrangements may be amended, modified, replaced, renewed, supplemented, refinanced or updated from time to time, and any credit agreements, mortgages or other financing arrangements that any of such Creditors, Mortgage-holders, Trustees, Bondholders, etc., may enter after the date hereof.

DOE acknowledges and agrees that, pursuant to the terms and conditions of certain of the above listed Financing Arrangements, a lien and security interest may automatically attach in favor of the above listed certain after-acquired property, which would include assets to be purchased in whole or in part with the DOE grant funds. Upon debt satisfaction, Recipient will ensure that such lien or security interest is discharged.”

Please provide a block for the Contract Officer to approve or disapprove, in full or part, your request. If approved the Contracting Officer will sign the request for encumbrance and return a copy to you. The approval will only apply to the specific grant cited.

If you have questions about this FAQ or preparing your request contact your assigned Technical Project Officer or Contract Specialist.