



**Department of Energy  
Financial Assistance Regulations**

**No: FAL 2022-05  
Date: September 23, 2022**

# **FINANCIAL ASSISTANCE LETTER**

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

**Subject: Continued Use of Real Property and Equipment After the Award Period of Performance Ends**

**References:**

- 2 CFR 200.310-316, Property Standards
- 2 CFR 910.360, Real Property and Equipment
- DOE Guide to Financial Assistance<sup>1</sup>

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

This FAL is effective upon issuance.

**When does the FAL expire?**

This FAL remains in effect until superseded or canceled.

**Who is the intended audience?**

Department of Energy (DOE) and National Nuclear Security Administration (NNSA) Heads of Contracting Activity (HCAs), Procurement Directors (PDs), and Contracting and Grants Officers. Any reference in this guidance to Contracting Officer (CO) should be understood to include Grants Officer (GO). Any reference in this guidance to the DOE should be understood to include the NNSA, unless otherwise indicated.

**Who are the Points of Contact?**

For DOE questions, please contact the Contract and Financial Assistance Policy Division at [DOE\\_OAPMPolicy@hq.doe.gov](mailto:DOE_OAPMPolicy@hq.doe.gov).

For NNSA, contact NNSA at (505) 845-4337.

**What is the purpose of this FAL?**

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<sup>1</sup> <https://www.energy.gov/sites/default/files/2021-09/Guide%20to%20Financial%20Assistance-%20October%202021.pdf>

The purpose of this FAL is to provide guidance on when and how DOE may allow recipients to continue using property (real and/or equipment) purchased with project funds (federal funds and/or recipient cost share funds) under a financial assistance award after the award period of performance ends.

### **What is the background information?**

Recipients and subrecipients that acquire real property and/or equipment using project funds must comply with the regulatory property standards<sup>2</sup> at 2 CFR 200.310-316 and 2 CFR 910.360, including requirements on acquisition, use, maintenance, and disposition. In accordance with 2 CFR 200.311, 2 CFR 200.313, and 2 CFR 910.360, DOE may allow non-federal entities, including for-profit entities, “continued use” of real property and/or equipment acquired with project funds after the award period of performance ends so long as the property is used for the authorized purposes of the federally funded project.<sup>3</sup>

Often, “continued use” furthers the DOE project objectives. As an example, where project funds are used to purchase equipment on a large demonstration project and where the demonstration extends beyond the performance period of the financial assistance award, the property may still be “needed for the purposes of the project” in that the continued existence and operation of the equipment will continue to demonstrate the technology’s effectiveness. As a second example, DOE may fund a project intended to improve infrastructure owned and operated by a non-federal entity (e.g., grid modernization, manufacturing facility retrofits, or energy efficiency improvements to a building). The real property and equipment acquired under an award with project funds would be expected to be in use for the project purposes long after the award period of performance ends and it would be contrary to the project objectives to require the recipient to go through property disposition immediately after the award ends.

Accordingly, DOE will evaluate instances to allow non-federal entities, including for-profit entities, “continued use” of real property or equipment acquired with project funds where the “continued use” complies with the conditions set forth at 2 CFR 200.311, 2 CFR 200.313, and 2 CFR 910.360, as applicable, and there is a means of protecting the continued federal interest.

### **What are the instructions/guidance of this FAL?**

#### **Sections**

- A. Applicability
- B. Definitions
- C. Guidance
- D. FOA Provision
- E. Award Term

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<sup>2</sup> States, local governments, Indian tribes, Institutions of Higher Education, and nonprofit organizations are subject to the requirements at 2 CFR 200.310-316. For-profit entities are subject to the requirements at 2 CFR 910.360.

<sup>3</sup> The regulatory standard is slightly different depending on which property regulation is applicable. As applicable to for-profit entities, 2 CFR 910.360(b)(1) states real property or equipment must be used for the “authorized purposes of the project until funding ceases, or until [it] is no longer needed for the purposes of the project[.]” As applicable to all other types of non-Federal entities, under 2 CFR 200.311(b), real property must be used for the “originally authorized purpose”; and for equipment, 2 CFR 313(c)(1) states it must be used “in the program or project for which it was acquired as long as needed[.]”

## **A. Applicability**

This FAL applies to funding opportunity announcements (FOAs) and financial assistance awards that include, or may include, recipient and/or subrecipient acquisition or improvement of real property and/or equipment. This FAL is not applicable to FOAs and financial assistance awards where a statute specifically authorizes and the resulting award specifies that the property vests unconditionally in the recipient. Further, this FAL is not applicable to FOAs and awards under the Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) Program.

## **B. Definitions**

Equipment, as defined in 2 CFR 200.1, means tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

Personal Property, as defined in 2 CFR 200.1, means property other than real property. It may be tangible, having physical existence, or intangible. Tangible personal property is further divided into equipment and supplies.

Project Funds, means the total amount of funds for the financial assistance award, including both federal funds and recipient cost share funds.

Period of Performance, as defined in 2 CFR 200.1, means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods.

Real Property, as defined in 2 CFR 200.1, means land, including land improvements, structures, and appurtenances thereto, but excludes movable machinery and equipment.

Supplies, as defined by 2 CFR 200.1, means all tangible personal property other than those described in 200.1 Equipment.

## **C. Guidance**

Real property and equipment acquired by recipients or subrecipients under an award with project funds are held by the recipient/subrecipient under conditional title upon acquisition, must be used for the authorized purposes of the federally funded project, and must be maintained in accordance with the applicable regulatory property standards.<sup>4</sup> After the award period of performance ends, a recipient may continue to use equipment and real property acquired with project funds for the authorized purposes of the federally funded project. This is applicable to all types of recipients, including for-profit entities.<sup>5</sup>

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<sup>4</sup> States, local governments, Indian tribes, Institutions of Higher Education, and nonprofit organizations are subject to 2 CFR 200.310-316 and for-profit entities are subject to 2 CFR 910.360.

<sup>5</sup> In accordance with 2 CFR 200.311(b); 200.313(c)(1); and 2 CFR 910.360(b)(1). See also footnote 3. Contracting Officers should review the regulations to determine the specific standard that is applicable to a particular situation.

Allowing for “continued use” of property after an award period of performance ends is often in the government’s interest and supports DOE’s programmatic objectives. As an example, where project funds are used to purchase equipment on a large demonstration project and where the demonstration extends beyond the award period of performance, the property may still be needed for the authorized project purposes in that the continued existence and operation of the equipment will continue to demonstrate the technology’s effectiveness. As a second example, DOE may fund a project intended to improve infrastructure owned and operated by a non-federal entity for purposes such as grid modernization, manufacturing facility retrofits, or energy efficiency improvements to a building, where the infrastructure improvements are intended to provide a public benefit long after the end of the award period of performance.

Often, recipients have a need to continue using the real property or equipment acquired with project funds for the authorized project purposes beyond the end of the award period of performance. In many cases, it may be contrary to the project objectives to require the recipients to proceed to property disposition at the end of the award, which requires the recipient to either: (1) compensate DOE a portion of the fair market value so the recipient can retain title; (2) sell the property and compensate DOE a portion of the proceeds; or (3) transfer title to DOE or a third party designated/approved by DOE<sup>6</sup>. Small and medium-sized non-federal entities, including for-profits, may not have the funds available to compensate DOE at the end of the award, and it could defeat the objectives of the project if the recipient must transfer title to DOE or sell the property shortly after the award period of performance ends.

As set forth in 2 CFR 910.360(b)(1), for-profit recipients (and subrecipients) must “[u]se the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the real property or equipment is no longer needed for the purposes of the project, as may be determined by the contracting officer[.]” This language makes it clear that DOE may allow “continued use” for for-profit entities. Some confusion as to whether “continued use” is allowed for for-profit entities has been caused by the language in 2 CFR 910.360(f)(2)(iv), which states, “If the only use for the real property or equipment is for projects that have no Federal sponsorship, the recipient must proceed with disposition.” However, as provided in the introductory language of 2 CFR 910.360(f)(2), the provisions of that paragraph, including subparagraph (iv), would not be applicable so long as the recipient continued to use the property for the authorized project purposes even if the award period of performance ended. Instead, 2 CFR 910.360(f)(2) is triggered when the property is no longer needed for the authorized project purposes; at that point 2 CFR 910.360(f)(2) would allow a for-profit recipient to use property for another project in limited circumstances and only if the other project had federal sponsorship. Accordingly, under 2 CFR 910.360(b)(1), DOE may determine that a for-profit recipient’s “continued use” of the equipment or real property is for the authorized project purposes after the award period of performance ends and, as such, is in the government’s best interest.

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<sup>6</sup> In accordance with 2 CFR 200.311(c)(3), 2 CFR 200.313(e)(3), and 2 CFR 910.360(g)(2)(i)(A) non-federal entities are entitled compensation for their attributable percentage of the current fair market value of the real property or equipment when instructed to transfer title.

To ensure a non-federal entity's "continued use" of federally funded equipment and/or real property is in the government's interest, DOE must be assured that: (1) the continued use complies with the conditions set forth at 2 CFR 200.310-316 and CFR 910.360; and (2) there is a means of protecting the continued Federal interest in the property. To ensure these two elements are met, when authorizing a Request for Continued Use, the CO's written approval must clearly identify:

- The authorized purposes of the project;
- The condition that the recipient shall not sell or encumber the property or permit any encumbrance without prior written approval of the CO;
- The requirement to request disposition instructions should the property no longer be needed for the authorized purposes of the project;
- Other applicable property standard requirements, including maintaining insurance and UCC financing statements, and encumbrance restrictions in accordance with 2 CFR 200.310-316 and 2 CFR 910.360;
- The requirement that UCC financing statements<sup>7</sup> for equipment acquired by for-profit recipients be properly recorded and maintained during the period of continued use, unless otherwise instructed by the CO;
- Any continued reporting requirements such as 2 CFR 200.330 real property reporting requirements and other reporting requirements imposed by DOE on the recipient as conditions of continued use (e.g., publication of data, periodically reporting to DOE on property status); and
- The requirement that the recipient will report to DOE any significant changes to the condition of the property.

Prior to closeout, the recipient must submit an SF-428 Tangible Personal Property Report and/or SF-429 Real Property Status Report (or similar property reporting forms) with its final report submissions to report on and document the status of all equipment and real property purchased during the award period of performance.<sup>8</sup> With the submission of these reports, a recipient may either (1) request for disposition of the property by including the SF-428C Disposition Report or SF-429C Real Property Status Report Attachment C (Disposition of Encumbrance); or (2) request continued use of the property.

In addition to the SF-428 or SF-429 reports (or similar property reporting forms), the recipient's request for continued use must include:

- a summary of how the property will be used (must align with the authorized project purposes);
- a proposed use period, e.g., perpetuity, until fully depreciated, or a calendar date where the recipient expects to submit disposition instructions;
- acknowledgement that the recipient shall not sell or encumber the property or permit any encumbrance without prior written DOE approval;
- an estimated current fair market value and the methodology used; and

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<sup>7</sup> UCC financing statements and financing statements have a 5-year life. Ostensibly, UCC filing statements should be maintained during the continued use of the property. Contracting Officers have discretion to determine whether to require maintenance of UCC statements during the continued use period.

<sup>8</sup> In accordance with Chapter 7.3.3 of the DOE Guide to Financial Assistance (October 1, 2021) addressing closeout reporting requirements.

- an Estimated Useful Life or depreciation schedule for equipment.

If continued use of real property or equipment is approved, COs must ensure appropriate property records are established and maintained and non-federal entity reporting and property maintenance requirements are met during the continued use period.<sup>9</sup> The term of continued use may extend until disposition or until the equipment has a fair market value of \$5,000 or less.

#### **D. FOA Provision**

Insert the following language in FOAs where DOE anticipates real property or equipment acquisitions, and wants to signal that DOE may approve continued use:

##### **Real Property and Equipment:**

Real property and equipment purchased with project funds (federal share and recipient cost share) are subject to the requirements at 2 CFR 200.310, 200.311, 200.313, and 200.316 (non-Federal entities, except for-profit entities) and 2 CFR 910.360 (for-profit entities). For projects selected for award under this FOA, the recipient may (1) take disposition action on the real property and equipment; or (2) continue to use the real property and equipment after the conclusion of the award period of performance, with Contracting Officer approval.

The recipient's written Request for Continued Use must identify the property and include: a summary of how the property will be used (must align with the authorized project purposes); a proposed use period, (e.g., perpetuity, until fully depreciated, or a calendar date where the recipient expects to submit disposition instructions); acknowledgement that the recipient shall not sell or encumber the property or permit any encumbrance without prior written DOE approval; current fair market value of the property; and an Estimated Useful Life or depreciation schedule for equipment.

When the property is no longer needed for authorized project purposes, the recipient must request disposition instructions from DOE. For-profit entity disposition requirements are set forth at 2 CFR 910.360. Property disposition requirements for other non-federal entities are set forth in 2 CFR 200.310 – 200.316.

[Each activity may tailor the term to include specific forms used by the activity and/or include additional requirements based on an assessment of risk]

#### **E. Award Term**

Insert the following award term in awards where DOE anticipates considerable real property or equipment acquisitions.

For awards to for-profit entities, UCC filing statements should generally be maintained during the continued use of the property. Contracting Officers have discretion to determine whether to require maintenance of UCC statements during the continued use period, but the determination should be made on a case-by-case basis at the time of the request for continued use. Accordingly,

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<sup>9</sup> Reporting and maintenance requirements for real property and equipment must be required in accordance with 2 CFR 200.310 – 200.316, 2 CFR 200.330, and 2 CFR 910.360.

the terms for for-profit entities should anticipate UCC filing statements will be required during the period of continued use.

**Continued Use of Real Property and Equipment:**

Real property and equipment purchased with project funds (federal share and recipient cost share) under this Award are subject to the requirements at 2 CFR 200.311, 200.313, and 200.316 (non-Federal entities, except for-profit entities) and 2 CFR 910.360 (for-profit entities). The Recipient may continue to use the real property and equipment after the conclusion of the award period of performance so long as the Recipient:

- a. continues to use the property for the authorized project purposes;
- b. complies with the applicable reporting requirements and regulatory property standards;
- c. as applicable to for-profit entities, UCC filing statements are maintained; and
- d. submits a written Request for Continued Use for DOE authorization, which is approved by the DOE Contracting Officer.

The Recipient must request authorization from the Contracting Officer to continue to use the property for the authorized project purposes beyond the award period of performance (“Request for Continued Use”). The Recipient’s written Request for Continued Use must identify the property and include: a summary of how the property will be used (must align with the authorized project purposes); a proposed use period (e.g., perpetuity, until fully depreciated, or a calendar date where the Recipient expects to submit disposition instructions); acknowledgement that the recipient shall not sell or encumber the property or permit any encumbrance without prior written DOE approval; current fair market value of the property; and an Estimated Useful Life or depreciation schedule for equipment.

When the property is no longer needed for authorized project purposes, the Recipient must request disposition instructions from DOE. For-profit entity disposition requirements are set forth at 2 CFR 910.360. Property disposition requirements for other non-federal entities are set forth in 2 CFR 200.310 – 200.316.

[Each activity may tailor the term to include specific forms used by the activity and/or include additional requirements based on an assessment of risk.]