



FINANCIAL ASSISTANCE LETTER

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

Subject: Implementation of the Consolidated Appropriations Act, 2023, Division D (Energy and Water Development and Related Agencies Appropriations Act, 2023), Title III and Title V; and Division E (Financial Services and General Government Appropriations Act, 2023), Title VII of Pub. L. No. 117-328.

References:

Consolidated Appropriations Act,
2023, Division D, Pub. L. No.
117-328

Title III, Section 301, 309 and
310; and Title V Sections 501

Consolidated Appropriations Act,
2023, Division E, Pub. L. No. 117-
328

Title VII, Sections 724, 738, 742,
743, 744, 745, and 750

Consolidated Appropriations Act,
2016, Pub. L. No. 114-113

Division D, Title III, Section 306.

When is this Financial Assistance Letter (FAL) effective?

The statutory provisions addressed in this FAL were effective as of December 29, 2022.

When does this FAL expire?

This FAL is in effect for FY23. This FAL and all previous FALs on appropriations will be archived after the end of the applicable FAL and 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 questions, please contact the Contract and Financial Assistance Policy Division at DOE_OAPMPolicy@hq.doe.gov.

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

For conference spending questions, please contact the Contract and Financial Assistance Policy Division at DOE_OAPMPolicy@hq.doe.gov.

Who is the intended audience?

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

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 Consolidated Appropriations Act, 2023, Division D (Energy and Water Development and Related Agencies Appropriations Act, 2023), Title III and Title V; and Division E (Financial Services and General Government Appropriations Act, 2023), Title VII of Pub. L. No. 117-328.

The Congressional Notification requirements of Pub. L. No. 117-328, Division D, Title III, Section 301(b), will be addressed in a separate Acquisition Letter/Financial Assistance Letter.

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 2023 appropriated funds. For funding opportunity announcements and financial assistance actions funded in whole or in part with previous fiscal year funds or other Act funds and guidance is not provided in this FAL, please refer to the corresponding FAL for appropriate guidance or contact your local General Counsel's Office. For example, if an award is made with fiscal year 2016 appropriated funds please see FAL 2016-01 for appropriate guidance.

What guidance is included in this FAL?

Consolidated Appropriations Act, 2023, Pub. L. No. 117-328.

**Division D - Energy and Water Development and Related Agencies
Appropriations Act, 2023**

Title III – Department of Energy

- I. Section 301(a) Unfunded Requests for Proposals/FOAs**
- II. Section 301(c) Multiyear Award Funding for DOE—Energy Programs; and Section 306 Multiyear Award Funding for DOE—Energy Programs—Science (From Section 306 of Division D of the 2016 Act)**
- III. Section 309 Vesting of Unconditional Title or Other Property Interests in Development, Demonstration and Deployment Programs**
- IV. Section 310 Use of Independent Project Management Procedures in Awards that Exceed \$100,000,000 in Federal Funding**

Title V – General Provisions

- V. Section 501 Lobbying Restrictions**

**Division E - Financial Services and General Government Appropriations
Act, 2023**

Title VII – General Provisions-Government-Wide

- VI. Section 724 Federal Funds Source Information**
- VII. Section 738 Reporting on Conference Spending**
- VIII. Section 742 Confidentiality Agreements Prohibiting Whistleblower Activities**
- IX. Section 743 Prohibition on Funding For Certain Nondisclosure Agreements**
- X. Section 744 Unpaid Federal Tax Liability**
- XI. Section 745 Felony Criminal Violations**
- XII. Section 750 Congressional Earmarks and Congressionally Directed Spending**

NOTE: The congressional notification requirements of Section 301(b) and 301(c) will be addressed in a separate AL/FAL.

I. Section 301(a) UNFUNDED REQUESTS FOR PROPOSALS/FOAs

What is the law?

301. (a) 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) in Title III of Division D of the 2023 Consolidated Appropriations Act requires that appropriations, funds, or authorities made available by Pub. L. 117-328 shall not be used to initiate or resume any program, project or activity or to prepare, initiate, or publicize Requests for Proposals (RFP), Requests for Information (RFI), Funding Opportunity Announcements (FOA), or similar arrangements 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 RFPs, RFIs, FOAs or similar arrangements 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 that the program, project, or activity has been funded by Congress.

II. Section 301(c) MULTIYEAR AWARD FUNDING FOR DOE—ENERGY PROGRAMS; and Section 306 MULTIYEAR AWARD FUNDING FOR DOE—ENERGY PROGRAMS—SCIENCE (From Section 306 of Division D of the 2016 Act)

What is the law?

301. (c) The Department of Energy may not, with respect to any program, project, or activity that uses budget authority made available in this title under the heading “Department of Energy—Energy Programs”, enter into a multiyear contract, award a multiyear grant, or enter into a multiyear cooperative agreement unless—

- (1) the contract, grant, or cooperative agreement is funded for the full period of performance as anticipated at the time of award; or
- (2) the contract, grant, or cooperative agreement includes a clause conditioning the Federal Government’s obligation on the availability of future year budget authority and the Secretary notifies the Committees on Appropriations of both Houses of Congress at least 3 days in advance.

The Consolidated Appropriations Act, 2016, provided that none of the funds made available under the heading “Department of Energy—Energy Programs—Science” in this **or any subsequent Energy and Water Development and Related Agencies appropriations Act for any fiscal year** may be used for a multiyear contract, grant, cooperative agreement, or Other Transaction (OT) Agreement of \$1,000,000 or less unless the contract, grant, cooperative agreement, or Other Transaction Agreement is funded for the full period of performance as anticipated at the time of award.

What is the scope of this requirement?

Section 301(c) of Division D of the 2023 Appropriations Act requires multiyear contracts, grants, cooperative agreements or other transaction agreements awarded with budget authority or funds appropriated by the 2023 Appropriations Act under the heading “Department of Energy—Energy Programs” must be funded for the full period of performance as anticipated at the time of award; or the contract, grant, cooperative agreement or other transaction award include a clause conditioning the Federal Government’s obligation on the availability of future year budget authority **and** the Secretary notifies the Committees on Appropriations of both Houses of Congress at least 3 days in advance.

Furthermore, Section 306 of Division D of the 2016 Act requires that multiyear contracts, grants, cooperative agreements, or other transaction awards of \$1,000,000 or less awarded **with funds appropriated by the 2016 Act or any subsequent Energy and Water Development and Related Agencies appropriations Act for any fiscal year** under the heading “Department of Energy—Energy Programs—Science” **must be funded for the full period of performance as anticipated at the time of award.**

What procedures need to be followed to implement this requirement?

Contracting and Grants Officers awarding multiyear contracts, grants, cooperative agreements, or other transaction awards with budget authority or funds appropriated by the 2023 Appropriations Act under the heading “Department of Energy—Energy Programs” must ensure that the funds for the full period of performance as anticipated at the time of award are available prior to award and obligated at award **or** the contract, grant, cooperative agreement or other transaction award includes a clause conditioning the Federal Government’s obligation on the availability of future year budget authority **and** the Secretary notifies the Committees on Appropriations of both Houses of Congress at least 3 days in advance of award.

Furthermore, Contracting Officers awarding multiyear contracts, grants, cooperative agreements, or other transaction awards of \$1,000,000 or less **with funds appropriated by the 2016 Act or any subsequent Energy and Water Development and Related Agencies appropriations Act for any fiscal year** under the heading “Department of Energy—Energy Programs—Science” **must ensure that the funds for the full period of**

performance, as anticipated at the time of award, are available prior to award and obligated at award.

“Multiyear grant or multiyear cooperative agreement award” or “Multi-year grant or multi-year cooperative agreement award” means a new or renewal award with a project period greater than 12 months, excluding continuation amendments.

III. Section 309 VESTING OF UNCONDITIONAL TITLE OR OTHER PROPERTY INTERESTS IN DEVELOPMENT, DEMONSTRATION AND DEPLOYMENT PROGRAMS

What is the law?

309. (a) Hereafter, for energy development, demonstration, and deployment programs funded under Department of Energy appropriations (other than those for the National Nuclear Security Administration and Office of Environmental Management) provided for fiscal year 2022, the current fiscal year, or any fiscal year thereafter (including by Acts other than appropriations Acts), the Secretary may vest unconditional title or other property interests acquired under projects in an award recipient, subrecipient, or successor in interest, including the United States, at the conclusion of the award period for projects receiving an initial award in fiscal year 2022 or later.

(b) Upon vesting unconditional title pursuant to subsection (a) in an award recipient, subrecipient, or successor in interest other than the United States, the United States shall have no liabilities or obligations to the property.

(c) For purposes of this section, the term “property interest” does not include any interest in intellectual property developed using funding provided under a project.

What is the scope of this requirement?

Section 309 in Title III of Division D of the 2023 Appropriations Act applies to energy development, demonstration, and deployment solicitations, funding opportunity announcements (FOAs), and awards of DOE financial assistance funded by DOE programs, other than programs under the National Nuclear Security Administration (NNSA) and the Office of Environmental Management (EM), to which funds appropriated under the 2022 Appropriations Act, the 2023 Appropriations Act, or any fiscal year thereafter, including Acts other than Appropriations Acts, are obligated and used to acquire property, other than intangible property, as allowable and authorized under an award.

What procedures need to be followed to implement this requirement?

When real property and equipment are authorized to be purchased in whole or in part with Federal funds under an award in accordance with its terms and conditions for energy development, demonstration, and deployment programs funded under Department of Energy

appropriations (other than those for the National Nuclear Security Administration and Office of Environmental Management) provided for fiscal year 2022, fiscal year 2023, or any fiscal year thereafter (including by Acts other than appropriations Acts), and a determination is made by the program office to vest unconditional title or other property interests acquired under that award in the recipient, subrecipient, or successor in interest, including the United States, at the conclusion of its period of performance, the Contracting Officers (COs) shall ensure that the program office has received, and the award file is documented to include, Secretarial approval to vest the unconditional title or other property interests acquired under the award to the recipient, subrecipient, or successor in interest, including the United States.

COs shall ensure the award contains a special T/C that identifies the specific details of the property and ownership (as approved by the Secretary), and any requirements of property administration applicable during performance under the award.

IV. Section 310 USE OF INDEPENDENT PROJECT MANAGEMENT PROCEDURES IN AWARDS THAT EXCEED \$100,000,000 IN FEDERAL FUNDING

What is the law?

310. None of the funds made available in this title may be used to support a grant allocation award, discretionary grant award, or cooperative agreement that exceeds \$100,000,000 in Federal funding unless the project is carried out through internal independent project management procedures.

What is the scope of this requirement?

Section 310 of Title III of Division D of the 2023 Appropriations Act applies to awards of DOE financial assistance (grant allocation, discretionary grant or cooperative agreement awards) exceeding \$100 million in FY2023 funds.

What procedures need to be followed to implement this requirement?

Program offices that intend to make financial assistance awards that exceed \$100,000,000 in Federal funding must have internal independent project management procedures that the program will use while administering the project under the award.

COs should work with program officials to ensure that they have internal independent project management procedures established and the FOA, and resulting award, contains the specific project requirements consistent with the project management procedures. Awards cannot be made unless there are internal independent project management procedures in place for the project.

For additional project management resources and principles see Chapter 2.1.6 Project Management in the Guide to Financial Assistance and DOE O 413.3 Program and Project Management for the Acquisition of Capital Assets.

V. Section 501 LOBBYING RESTRICTIONS

What is the law?

501. 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 2023 Appropriations Act applies to all solicitations, funding opportunity announcements (FOAs), and awards of DOE financial assistance to which funds appropriated under the 2023 Appropriations Act are obligated.

What procedures need to be followed to implement this requirement?

Contracting Officers shall ensure that the standard provision and award term entitled “**LOBBYING RESTRICTIONS**” is incorporated into all solicitations, FOAs, and awards of financial assistance that use funds appropriated by the 2023 Appropriations Act.

VI. Section 724 FEDERAL FUNDS SOURCE INFORMATION

What is the law?

724. Any request for proposals, solicitation, grant application, form, notification, press release, or other publications involving the distribution of Federal funds shall comply with any relevant requirements in part 200 of title 2, Code of Federal Regulations: *Provided*, That this section 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 2022 Appropriations Act requires that Federal forms used to distribute Federal funds to a State must comply with the requirements of 2 CFR 200, as implemented by 2 CFR 910.

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 2023 Appropriations Act must comply with the requirements of 2 CFR 200, as implemented by 2 CFR 910.

VII. Section 738 REPORTING ON CONFERENCE SPENDING

What is the law?

738. (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 2023 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 after the end of a quarter, 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 a conference held by any Executive branch department, agency, board, commission, or office funded by this or any other appropriations Act during fiscal year 2023 for which the cost to the United States Government was more than \$20,000.

(d) A grant or contract funded by amounts appropriated by this or any other appropriations Act 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 or any subsequent revisions to that memorandum.

What is the scope of this requirement?

Section 738 of Division E of the 2023 Appropriations Act applies to all solicitations, FOAs, and awards of financial assistance or contracts funded by the 2023 Appropriations Act, or any other appropriations act.

What procedures need to be followed to implement this requirement?

Contracting Officers shall ensure that the “**Conference Spending**” term is incorporated into all new financial assistance solicitations and FOAs that will result in financial assistance awards as well as in all new financial assistance awards that are obligated with funds appropriated by the 2023 Appropriations Act or any other appropriations act. Contracting Officers shall also ensure that financial assistance awards are not made or amended to defray costs to DOE and/or circumvent the requirements for approval of DOE conferences.

VIII. Section 742 CONFIDENTIALITY AGREEMENTS PROHIBITING WHISTLEBLOWER ACTIVITIES

What is the law?

742. (a) None of the funds appropriated or otherwise made available by this or any other Act may be available for a contract, grant, or cooperative agreement with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The limitation in subsection (a) shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

What is the scope of this requirement?

Section 742 of Division E of the 2023 Appropriations Act applies to all applicants for and recipients of new DOE grant, cooperative agreement, and other transaction agreements, and any current, renewal or continuation awards that are funded by the 2023 Appropriations Act or funds from any other Acts. This requirement includes no dollar value threshold and does flow down to subawardees (e.g., subrecipients, subgrantees, subcontractors).

SF312 is the Classified Information Nondisclosure Agreement.

What procedures need to be followed to implement this requirement?

Contracting Officers shall ensure that the “**Nondisclosure and Confidentiality Agreements Representations**” is incorporated into all new financial assistance solicitations and FOAs that will result in grant, cooperative agreement, or OT awards that are obligated with funds appropriated by the 2023 Appropriations Act or any other Acts.

The Contracting Officer shall ensure that the awarded entity’s representation is current at award by including the “**Nondisclosure and Confidentiality Agreements Assurances**” in new, current and renewal/continuation grant, cooperative agreement, and OT awards that are obligated with funds appropriated by the 2023 Appropriations Act or any other Acts. To ensure that Recipients of previously awarded grants, cooperative agreements or OT awards do not prohibit or otherwise restrict their employees or contactors from lawfully reporting waste, fraud, or abuse, Contracting Officers shall include the “**Nondisclosure and Confidentiality Agreements Assurances**” in the next award modification that is executed and funded after enactment of this Act with funds from this 2023 Appropriations Act or any other Act.

IX. Section 743 PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS**What is the law?**

743. (a) No funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the following provisions: “These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”: *Provided*, That notwithstanding the preceding provision of this section, a nondisclosure policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

(b) A nondisclosure agreement may continue to be implemented and enforced notwithstanding subsection (a) if it complies with the requirements for such agreement that were in effect when the agreement was entered into.

(c) No funds appropriated in this or any other Act may be used to implement or enforce any agreement entered into during fiscal year 2014 which does not contain substantially similar language to that required in subsection (a).

What is the scope of this requirement?

Section 743 of Division E of the 2023 Appropriations Act applies to non-Federal nondisclosure policies, forms, or agreements in use while performing under a Federal award (grant, cooperative agreement or other transaction).

SF312 is the Classified Information Nondisclosure Agreement.

What procedures need to be followed to implement this requirement?

Contracting Officers shall ensure that the “**Nondisclosure and Confidentiality Agreements Representations**” is incorporated into all new financial assistance solicitations and FOAs that will result in grant, cooperative agreement, or OT awards that are obligated with funds appropriated by the 2023 Appropriations Act or any other Acts.

The Contracting Officer shall ensure that the awarded entity’s representation is current at award by including the “Nondisclosure and Confidentiality Agreements Assurances” in new, current and renewal/continuation grant, cooperative agreement, and OT awards that are obligated with funds appropriated by the 2023 Appropriations Act or any other Acts. To ensure that Recipients of previously awarded grants, cooperative agreements or OT awards do not use funds appropriated in this or any other Act to implement or enforce any nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the appropriate provisions, Contracting Officers shall include the “**Nondisclosure and Confidentiality Agreements Assurances**” in the next award modification that is executed and funded after enactment of this Act with funds from this Act or any other Act.

X. Section 744 UNPAID FEDERAL TAX LIABILITY

What is the law?

744. None of the funds made available by this or any other 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 a Federal 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 744 of Division E of the 2023 Appropriations 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 2023 Appropriations Act or any other 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 Representation**” 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 2023 Appropriations Act or any other 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**” in new and renewal/continuation awards to corporations that are obligated with funds appropriated by the 2023 Appropriations Act or any other Act.

See note on Sections 744 and 745 below.

XI. Section 745 FELONY CRIMINAL VIOLATIONS

What is the law?

745. None of the funds made available by this or any other 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 a Federal 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 745 of Division E of the 2023 Appropriations 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 2023 Appropriations Act or any other 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**” 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 2023 Appropriations Act or any other 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**” in new and renewal/continuation awards to corporations that are obligated with funds appropriated by the 2023 Appropriations Act or any other Act.

See note on Sections 744 and 745 below.

FOR SECTIONS 744 and 745:

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 lead agency SDO, which may not be the DOE SDO, has: (1) considered suspension or debarment of the corporation and (2) has made a 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.

XII. Section 750 CONGRESSIONAL EARMARKS AND CONGRESSIONALLY DIRECTED SPENDING**What is the law?**

749. (a) Any non-Federal entity receiving funds provided in this or any other appropriations Act for fiscal year 2023 that are specified in the disclosure table submitted in compliance with clause 9 of rule XXI of the Rules of the House of Representatives or Rule XLIV of the Standing Rules of the Senate that is included in the report or explanatory statement accompanying any such Act shall be deemed to be a recipient of a Federal award with respect to such funds for purposes of the requirements of 2 C.F.R. 200.334, regarding records retention, and 2 C.F.R. 200.337, regarding access by the Comptroller General of the United States.

(b) Nothing in this section shall be construed to limit, amend, supersede, or restrict in any manner any requirements otherwise applicable to non-Federal entities described in paragraph (1) or any existing authority of the Comptroller General.

What is the scope of this requirement?

Section 750 of Division E of the 2023 Appropriations Act applies to the non-Federal recipients of DOE awards (grant, cooperative agreement or other transaction awards) as a result of congressional earmarks and congressionally directed spending items (as defined in clause 9 of rule XXI of the Rules of the House of Representatives and rule XLIV of the Standing Rules of the Senate, respectively) included in the 2023 Consolidated Act or the explanatory statement to which funds appropriated under the 2023 Appropriations Act or any other FY23 appropriations act are obligated.

See the attachment for a list of Congressional Directed Spending for DOE.

What procedures need to be followed to implement this requirement?

Contracting Officers must ensure the records retention and access requirements of 2 CFR 200.334, Retention requirements for records, and 2 CFR 200.337, Access to records are enforced on awards to non-federal entities identified in the attached list of Congressional Directed Spending for DOE. In addition to the 2 CFR 200 and 2 CFR 910 requirements included by reference in DOE awards, Contracting Officer shall ensure the following award terms (*Record Retention and Access; Audits; and Allowable Costs*) are included in Congressional Directed awards to the non-Federal entities in the attached list:

Record Retention and Access

The Recipient is required to retain, and allow access to, records relating to this Award consistent with 2 CFR 200.334 through 200.338.

Audits

A. Government-Initiated Audits

The Recipient must provide any information, documents, site access, or other assistance requested by DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Recipient's records relating to this Award.

Consistent with 2 CFR part 200 as amended by 2 CFR part 910, DOE may audit the Recipient's financial records or administrative records relating to this Award at any time. Government-initiated audits are generally paid for by DOE.

DOE may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Recipient is required to refund to DOE any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to

recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

DOE will provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

B. Annual Independent Audits (Single Audit or Compliance Audit)

The Recipient must comply with the annual independent audit requirements in 2 CFR 200.500 through .521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500 through .521 for for-profit entities (Compliance audit).

The annual independent audits are separate from Government-initiated audits discussed in part A. of this Term and must be paid for by the Recipient. To minimize expense, the Recipient may have a Compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is not a substitute for the Compliance audit. If the audit (Single audit or Compliance audit, depending on Recipient entity type) has not been performed or completed prior to the closeout of the award, DOE may impose one or more of the actions outlined in 2 CFR 200.338, Remedies for Noncompliance.

Allowable Costs

DOE determines the allowability of costs in accordance with to 2 CFR part 200 as amended by 2 CFR part 910. The Recipient must document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its subrecipients and project costs that the Recipient claims as cost sharing, including in-kind contributions. The Recipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the appropriate cost principles. Upon request, the Recipient is required to provide such records to DOE. Such records are subject to audit. Failure to provide DOE adequate supporting documentation may result in a determination by the Contracting Officer that those costs are unallowable.