



Applicant Eligibility Guidance

This guidance provides information about applicant eligibility for the Department of Energy (DOE) Office of Clean Energy Demonstrations (OCED) Funding Opportunity Announcements (FOA), including how an applicant can determine if it is eligible to apply to an OCED FOA, how DOE determines eligibility, and entities that are generally eligible to apply.

Prior to applying to an OCED FOA, an interested entity should consider if they are eligible to apply to that FOA. It is important to consider eligibility, especially to avoid potentially wasting resources completing an application when the organization is not eligible for that FOA.

How can an entity determine if it is eligible to apply to an Office of Clean Energy Demonstrations Funding Opportunity Announcement?

When considering eligibility, entities can review the “Eligible Applicants” section of the published FOA to determine what types of entities can apply and assess whether they fit within that FOA’s eligibility criteria.

How will OCED determine eligibility?

Upon receipt of applications, the OCED Grants and Agreements Officer will determine whether:

- 1) The applicant meets the eligibility requirements and is eligible for an award;
- 2) The information and documentation required by the FOA have been submitted;
- 3) All mandatory submittal and eligibility requirements are satisfied; and
- 4) The proposed project is responsive to the objectives of the FOA.

Applications that do not meet all the eligibility requirements of the FOA will not be evaluated further.

What types of entities are generally eligible to apply to OCED FOAs?

The following entities are generally eligible to apply to OCED FOAs; however, please refer to eligibility requirements in the ‘Eligibility’ section of the relevant published FOA for specific information.

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| 1) Institutions of Higher Education | 5) Tribal Nations |
| 2) Nonprofit Organizations | 6) Incorporated Consortia |
| 3) For-Profit Entities | 7) Unincorporated Consortia |
| 4) State and local governmental entities | |

This guidance document does not supersede Federal laws and regulations. This OCED guidance document is for informational purposes only and is not a requirements document. If there are inconsistencies between this OCED guidance document and any specific program or project document, the specific OCED program or project document should be relied upon as it is the controlling document.



Proposed prime recipients and subrecipients must be domestic entities except as stated below. To qualify as a domestic entity, the entity must be organized, chartered, incorporated (or otherwise formed) under the laws of a particular state or territory of the United States; have majority domestic ownership and control; and have a physical place of business in the United States. In limited circumstances, DOE may approve a waiver to allow a foreign entity to participate as a prime recipient or subrecipient. A foreign entity may submit an application to a FOA, but it must be accompanied by an explicit written waiver request. Likewise, if the applicant seeks to include a foreign entity as a subrecipient, the applicant must submit a separate explicit written waiver request in the application for each proposed foreign subrecipient.

What is an Institution of Higher Education?

Institution of Higher Education is defined in [2 CFR § 200.1](#), referencing [20 USC § 1001](#), and means an educational institution in any State that:

- 1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of [20 USC § 1091\(d\)](#);
- 2) is legally authorized within such State to provide a program of education beyond secondary education;
- 3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;
- 4) is a public or other nonprofit institution; and
- 5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

What is a Nonprofit Organization?

A nonprofit organization is defined in [2 CFR § 200.1](#) as any corporation, trust, association, cooperative, or other organization, not including Institutions of Higher Education, that:

- 1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- 2) Is not organized primarily for profit; and
- 3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

However, [2 USC § 1611](#) provides that nonprofit organizations described in section 501(c)(4) of the Internal Revenue Code of 1986 ([26 USC § 501\(c\)\(4\)](#)) that engaged in lobbying activities after December 31, 1995, are not eligible for Federal funding constituting an award, grant, or loan.

What is a For-Profit Entity?

A for-profit organization is defined as one that distributes any profit not reinvested into the business as profit or dividends to its employees or shareholders.



What is a State?

A State is defined in [2 CFR § 200.1](#) as any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

What is a Local Government?

A Local Government is defined in [2 CFR § 200.1](#) as any unit of government within a state, including a: (1) County; (2) Borough; (3) Municipality; (4) City; (5) Town; (6) Township; (7) Parish; (8) Local public authority, including any public housing agency under the United States Housing Act of 1937; (9) Special district; (10) School district; (11) Intrastate district; (12) Council of governments, whether or not incorporated as a nonprofit corporation under state law; and (13) any other agency or instrumentality of a multi-, regional, or intra-state or local government.

What is a Tribal Nation?

Indian tribe is defined in [2 CFR § 200.1](#) as an extant or historical clan, tribe, band, nation, or other group or community of Native Americans in the United States. An Indian tribe is any tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act ([43 USC Chapter 33](#)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status ([25 USC § 450b\(e\)](#)). The Bureau of Indian Affairs publishes an annual list of Indian Entities Recognized and Eligible to Receive Services. That list is located [here](#) under the Additional Information heading.

What is an Incorporated Consortium?

An Incorporated Consortium is a group made up of two or more individuals, companies, or governments that work together to achieve a common objective. Those who participate in a consortium pool their resources but are otherwise only responsible for the obligations that are set out in the consortium's agreement. Every entity that is under the consortium, therefore, remains independent with regard to their normal business operations and has no say over another member's operations that are not related to the consortium.

Consortia participants should bring together manufacturers, small and medium businesses, researchers, and state and local governments to coordinate in high-priority technology areas. The technology areas that demonstration consortia specialize in are essential to clean energy manufacturing, industrial efficiency, and decarbonization. Each consortium must have an internal governance structure and a written set of internal rules.

Each consortium must have an internal governance structure and a written set of internal rules. Upon request, the consortium must provide a written description of both to the DOE Grants and Agreements Officer.

If the consortium includes foreign members, the applicant must submit a separate explicit written waiver request for each foreign member. Refer to the Foreign Entity Participation Waiver and Performance of Work in the United States language in the relevant OCED FOA for more information.

What is an Unincorporated Consortium?

An Unincorporated Consortium is one that is not required to organize as a separate legal entity. Instead, the unincorporated consortia are created by contract. The unincorporated consortia have no predetermined rules established by law or any preexisting paradigm between shareholders or owners, management, and the board. Consequently, any rules that govern issues concerning conflict of interests, shareholder governance or management of the unincorporated consortia must be spelled out in an agreement.



Unincorporated Consortia must designate one member of the consortium to serve as the prime recipient/consortium representative. The prime recipient/consortium representative must qualify as a domestic entity.

Upon request, unincorporated consortia must provide the DOE Grants and Agreements Officer with a collaboration agreement, commonly referred to as the articles of collaboration, which sets out the rights and responsibilities of each consortium member. This agreement binds the individual consortium members together and should include the consortium's:

- ▶ Management structure;
- ▶ Method of making payments to consortium members;
- ▶ Means of ensuring and overseeing members' efforts on the project;
- ▶ Provisions for members' cost sharing contributions; and
- ▶ Provisions for ownership and rights in intellectual property developed previously or under the agreement.

If the consortium includes foreign members, the applicant must submit a separate explicit written waiver request in the Full Application for each foreign member. Refer to the Foreign Entity Participation Waiver and Performance of Work in the United States language in the relevant OCED FOA for more information.

What are Federally Funded Research and Development Centers?

As defined in [Federal Acquisition Regulation section 35.017](#), Federally funded research and development centers (FFRDCs) are operated by universities, nonprofit organizations, or an industrial firm to fulfill certain long-term needs of the government that cannot be met as effectively by existing in-house or contractor resources. A list of FFRDCs can be found at <http://www.nsf.gov/statistics/ffrdclist/>.

Unless otherwise stated in a specific OCED program, DOE/National Nuclear Security Administration (NNSA) FFRDCs are eligible to apply for funding as a subrecipient but not as a prime recipient. Non-DOE/NNSA FFRDCs are eligible to participate as a subrecipient but are not eligible to apply as a prime recipient.

Are Federal Agencies and Instrumentalities eligible to apply to OCED FOAs?

Federal agencies and instrumentalities (other than DOE) are eligible to participate as a subrecipient but are not eligible to apply as a prime recipient, unless otherwise stated in a specific OCED program.

Are Foreign Entities eligible to apply to OCED FOAs?

As stated above, proposed recipients and subrecipients must be domestic entities. In limited circumstances, DOE may approve a waiver to allow a foreign entity to participate as a prime recipient or subrecipient. A foreign entity may submit an application to this FOA, but the application must be accompanied by an explicit written waiver request. Likewise, if the applicant seeks to include a foreign entity as a subrecipient, the applicant must submit a separate explicit written waiver request in the application for each proposed foreign subrecipient.

Refer to the Foreign Entity Participation Waiver and Performance of Work in the United States language in the relevant OCED FOA for more information. DOE's decision concerning a Foreign Work Waiver request is not appealable.

Are entities banned from doing business with the United States Government eligible to apply to OCED FOAs?

Entities banned from doing business with the United States government such as entities debarred, suspended, or otherwise excluded from or ineligible for participating in Federal programs are not eligible to participate as either prime recipients or subrecipients. See [2 CFR § 200.214](#) and [2 CFR Part 180](#).