



FINANCIAL ASSISTANCE LETTER

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

Subject: Federal awarding agency pre-award review of risk posed by applicants and Federal Awardee Performance and Integrity Information System ([FAPIS](#))

References:

P.L. 110-417 Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (“NDAA 2009”)
2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
DOE Guide to Financial Assistance
DOE Merit Review Guide
DOE Award Term Reporting of Matters Related to Recipient Integrity and Performance

When is this Financial Assistance Letter (FAL) effective?

The statutory provisions addressed in this FAL are effective January 1, 2016 and remain in effect until superseded or cancelled.

When does this FAL expire?

This FAL is in effect until superseded or cancelled.

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.

Discontinued. Updates to 2 CFR 200

Who is the intended audience?

Department of Energy (DOE) and National Nuclear Security Administration (NNSA) Contracting Officers responsible for the issuance of Funding Opportunity Announcements (FOAs) and the award and administration of financial assistance awards.

What is the purpose of this FAL?

The purpose of this FAL is to provide Contracting Officers with information regarding the utilization of the Federal Awardee Performance and Integrity Information System (FAPIS) as part of the pre-award risk assessment conducted before making an award where the Federal share is expected to exceed the Simplified Acquisitions Threshold (SAT) (currently \$150,000) as required by 2 CFR 200.205, effective January 1, 2016.

What types of actions are affected by this FAL?

This FAL applies to all DOE and NNSA FOAs and financial assistance awards.

What is the Applicability of this FAL?

This FAL is applicable to all DOE elements (including the NNSA, which issue FOAs, make financial assistance awards (grants and cooperative agreements) and administer financial assistance awards).

What is the Relevant Background Information?**FAPIS and PPIRS:**

The Federal Awardee Performance and Integrity Information System (FAPIS) is a government-wide system that collects information related to the integrity and performance of entities awarded Federal financial assistance and contracts. This system was initiated in section 872 of NDAA 2009 and is a part of the System for Award Management (SAM). FAPIS integrates various sources of information regarding non-Federal entities to help Federal awarding agencies determine whether a recipient is qualified before the issuance of Federal awards and is available at

<https://www.fapis.gov>.

NDAA 2009 section 872 states that Federal awarding agencies: (a) require applicants to submit integrity and performance information for inclusion in FAPIS; and (b) consider all FAPIS information on a non-Federal entity before awarding financial assistance to that entity. FAPIS includes information regarding the following: Terminations for Cause or Default, Defective Cost and Pricing Data, Determinations of Non-Responsibility, Terminations for Material Failure to

Comply (financial assistance), Recipient Not Qualified Determinations (financial assistance), DoD Determination of Contractor Fault and Administrative Agreements. FAPIIS records are made available to support future Federal awards via the Federal Past Performance Information Retrieval System (PPIRS) (a part of SAM).

2 CFR Part 200 – Updated risk review and performance tracking:

On July 22, 2015, the Office of Management and Budget (OMB) amended 2 CFR 200 and 2 CFR 180 regarding use of FAPIIS for Federal financial assistance awards. As of January 1, 2016:

- 2 CFR 200.205 requires Federal agencies to review FAPIIS (including information in the non-public segment) as part of the pre-award risk assessment before making an award where the Federal share is expected to exceed the SAT over the period of performance.
- 2 CFR 200.212 requires agency reporting when a financial assistance applicant has been determined to be “not qualified” for a Federal award.
- 2 CFR 200.213 contains information regarding suspension and debarment (previously found at 2 CFR 200.212).
- 2 CFR 200.339 and 2 CFR 200.340 requires agency reporting of award terminations in FAPIIS.
- 2 CFR 200 Appendix XII contains the award term and condition requiring recipient integrity and performance reporting.

It is important to note that in addition to reviewing FAPIIS, Federal awarding agencies must still search through the SAM Exclusion Extract to verify that applicants/potential recipients are eligible to receive Federal funds. See 2 CFR 200.205.

FAPIIS is a publicly accessible website. Financial Assistance applicants should review the information in FAPIIS about their entity before submitting an application. Financial Assistance applicants have the opportunity to submit a response about any information about their entity contained in FAPIIS.

Pass-through entities are not required under the new requirements to review FAPIIS when awarding subawards. However, because FAPIIS is publically available, pass-through entities may want to review the system before making any subawards.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

What Guidance is Included in this FAL?

Existing DOE policies and procedures address many of the risk assessment requirements of 2 CFR 200.205. The associated DOE policies and procedures are set forth in parentheses within the regulation below:

2 CFR 200.205, Federal awarding agency review of risk posed by applicants

(a) Review OMB-designated repositories of governmentwide data:

(1) Prior to making a Federal award, the Federal awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information as appropriate. Agencies must also follow the Suspension and Debarment requirements at 2 CFR part 180 as well as their own suspension and debarment regulations in title 2 of the Code of Federal Regulations (**See 2 CFR 901 for DOE's Nonprocurement Debarment and Suspension supplement**).

(2) In accordance 41 U.S.C. 2313, the Federal awarding agency is required to review the non-public segment of the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold, defined in 41 U.S.C. 134, over the period of performance. At a minimum, the information in the system for a prior Federal award recipient must demonstrate a satisfactory record of: (i) executing programs or activities under Federal grants, cooperative agreements, or procurement awards; and (ii) integrity and business ethics. The Federal awarding agency may make a Federal award to a recipient who does not fully meet these standards, if it is determined that the information is not relevant to the current Federal award under consideration or there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with 2 CFR 200.207 Specific conditions (**See also DOE Guide to Financial Assistance (FA) chapter 2.5.4**).

(b) In addition, for competitive grants or cooperative agreements, the Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application (**See Guide to FA chapters 2.4.1 and 2.5.8**). If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk

assessed may be applied to the Federal award (See Guide to FA chapters 2.1.6 and 2.5.4). Criteria to be evaluated must be described in the announcement of funding opportunity described in 2 CFR 200.203 Notices of funding opportunities.

(c) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following:

- (1) Financial stability (See Guide to FA chapter 2.5.2);
- (2) Quality of management systems and ability to meet the management standards prescribed in this part (See Guide to FA chapter 2.5.3);
- (3) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards (See Guide to FA chapter 2.5.3);
- (4) Reports and findings from audits performed under Subpart F— Audit Requirements of 2 CFR 200 or the reports and findings of any other available audits (See Guide to FA chapter 2.5.4); and
- (5) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities (See Guide to FA chapter 2.5.3).

(d) In addition to this review, the Federal awarding agency must comply with the guidelines on governmentwide suspension and debarment in 2 CFR part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

I. Application Review Requirements

DOE policy continues to require that all discretionary financial assistance, competitive or noncompetitive, be awarded through a merit-based selection process along with a responsibility determination. Therefore, each financial assistance application must have a merit review evaluated against pre-established merit review criteria and a risk/responsibility review. The risk review must now include a record check in FAPIIS, as well as the responsibility review described in the DOE Guide to Financial Assistance and any identified program policy factor review. Refer to the DOE's Guide to Financial Assistance and the DOE Merit Review Guide (<http://www.energy.gov/management/office-management/operational-management/financial-assistance>).

During the FAPIIS review, agency officials will determine if an applicant is “qualified” or “not qualified” to receive an award. Federal awarding agencies will be required to notify applicants if they have been deemed “not qualified” for an award. The “qualified” and “not qualified” designation is award-specific. The Federal Register notice for OMB’s final rule explains (80 FR 43301, 43305-06):

It is possible for a Federal awarding agency to determine that a non-Federal entity is not qualified for one award and, depending on the reasons for that first determination, qualified for another award. For example, a Federal awarding agency may determine that a non-Federal entity is: (1) Not qualified for a Federal award for a large and complex program, due to information in the designated integrity and performance system indicating an unsatisfactory record for performing under Federal awards for programs of that level of complexity; and (2) qualified for a second Federal award to carry out a simpler program. Further, Federal awarding agencies may make a Federal award to a recipient who does not fully meet these standards, if there are specific conditions that can appropriately mitigate the effects of the non-Federal entity’s risk in accordance with § 200.207.

Each DOE pre-award risk and responsibility assessment at a minimum shall include the following:

A. Risk Review:

Contracting Officers must review and consider the following FAPIIS information:

- Financial Assistance Records:
 - Termination for Material Failure to Comply
 - Recipient Not Qualified Determination
 - Administrative Agreement with a non-Federal entity to resolve a suspension or debarment proceeding
- Contract Records Review:
 - Termination (Default or Cause)
 - Non-Responsibility Determination
 - Defective Pricing
 - Administrative Agreement with a non-Federal entity to resolve a suspension or debarment proceeding
 - DoD Determination of Contractor Fault

Contracting Officers may utilize the principles in DOE O 413.3, *Program and Project Management for Acquisition of Capital Assets*, to identify and evaluate project performance risks (areas such as market conditions, legal issues, technical issues, financial issues, supply chain, end user acceptance or any other factor that would contribute to the successful performance of the proposed activity can be used as part of the risk evaluation). Contracting Officers should be aware of specific program

requirements and work with program officials to ensure that FOAs include specific language with these requirements. The FOA should include merit review criteria that assess the recipient's abilities to manage projects consistent with the level of risk involved in the project. Special terms and conditions may be required for awards with project performance risks. These could include structuring budget periods around go/no-go decisions, special reporting requirements or payment schedules.

B. Responsibility Review:

Contracting Officers must:

- Upon receipt of applications, perform an initial review to determine that: (1) the applicant is eligible for an award; (2) the information required by the announcement has been submitted; (3) all mandatory requirements are satisfied; and (4) the proposed project is responsive to the objectives of the funding opportunity announcement.
- Prior to making award, make an affirmative determination of responsibility. This determination includes, as applicable, the financial management assessment and business review discussed in Guide to FA chapter 2.5.2, review of audits performed under Subpart F—Audit Requirements of 2 CFR 200 or the reports and findings of any other available audits, and review of activities under previous awards, especially submission of required reports.

The responsibility determination considers if the applicant has the administrative and programmatic capabilities to perform. The extent of this screening depends on if DOE has any prior experience with the applicant, as well as the size, nature and complexity of the project information provided by the technical reviewers; and other known factors, as applicable, that may affect the organization's capabilities to perform.

In determining "administrative capability," the contracting officer must assess the capability of an applicant or recipient to develop and implement administrative systems required by 2 CFR 200, including systems related to financial management, property management, procurement standards, financial reporting, record-keeping, and submission of administrative reports/certifications for financial assistance closeout.

In determining "programmatic capability," the contracting officer must assess the technical capability of an applicant or recipient to successfully carry out a project taking into account such factors as the applicant's: (1) Performance in successfully completing federally and/or non-federally funded projects similar in size, scope, and relevance to the proposed project; (2) History of meeting reporting requirements on prior or current assistance agreements with federal and/or non-federal organizations and submitting acceptable final technical reports; (3)

Organizational experience and plans for timely and successful achievement of the objectives of the project; and (4) Staff expertise/qualifications and resources or the ability to obtain them, to successfully achieve the goals of the project.

II. Financial Assistance FAPIIS Reporting Requirements

Effective January 1, 2016, Contracting Officers are required to:

- Include the STRIPES term and condition - **Reporting of Matters Related to Recipient Integrity and Performance** (See Appendix A) in FOAs and awards where the Federal share may exceed \$500,000 over the period of performance ([2 CFR 200.210](#)).
- Report all determinations that a non-Federal entity is “not qualified” to receive an award that is expected to exceed the simplified acquisition threshold to FAPIIS ([2 CFR 200.212](#)).
- Report award terminations due to a material failure to comply with award terms and conditions to FAPIIS ([2 CFR 200.339](#)).
- Notify applicants/recipients when entering information in the system regarding their organization and their right to comment to the system (2 CFR 200.212 and 220.339).

When a FAPIIS record is generated, an email notification is sent to the SAM POC (to the Past Performance POC listed, if that field is completed; if there is no Past Performance POC listed, the email notification will go to the Government Business POC in SAM). Notification includes instructions for non-Federal entity review/comment before the record becomes public. (Note: There is a 14-day delay before information agencies enter into FAPIIS-government becomes available in FAPIIS-public.)

If agencies become aware that information entered into the system is erroneous, the agency must correct the information in the system within **3 business days**. If agencies receive an update to the information entered into the system that could be helpful to another agency, the agency is strongly encouraged to amend the information in the system in a timely manner. (Note: FAPIIS records remain available for 5 years.)

Systems Defined:

[CPARS](#) - Contractor Performance Assessment System (www.cpars.gov): The sole past performance reporting system to collect and transmit performance evaluations to PPIRS.

- The FAPIIS module of CPARS allows government officials to create Termination and Recipient No Qualified records that are then made publicly available.

- [PPIRS](http://www.ppirs.gov) - Past Performance Information Retrieval System (www.ppirs.gov): Developed for federal government contracting/grant officers and source selection officials as a "one-stop shop" for retrieving past performance history.
 - The FAPIIS module of PPIRS allows government officials to review all performance and integrity information prior to award decisions.

- [FAPIIS](http://www.fapiis.gov) - Federal Awardee Performance and Integrity Information System (www.fapiis.gov): A publically accessible site that contains government-entered integrity and performance information, vendor-entered proceedings information as well as government-entered suspension/debarment information from SAM.
 - Federal awarding agencies must report information to the designated integrity and performance system about any termination of an award due to a material failure to comply with the Federal award terms and conditions; any finding that a non-Federal entity is not qualified to receive a given award, if the finding is based on criteria related to the non-Federal entity's integrity or prior performance under Federal awards; and any administrative agreement with a non-Federal entity to resolve a suspension or debarment proceeding.
 - Federal awarding agencies, prior to making an award to a non-Federal entity, must determine whether that non-Federal entity is qualified to receive that particular award. In making the determination, the Federal awarding agency must take into consideration any information about the entity that is in the designated integrity and performance system.

- [SAM](http://www.sam.gov) - System for Award Management (www.sam.gov): The federal government-wide contractor/grantee registration database that increases visibility of vendor sources for specific supplies and services and establishes a common source of vendor data for the Government.

Resources:

- Request FAPIIS access from Agency local Point of Contact – Same as requesting access to CPARS/PPIRS
- FAPIIS Overview training available under “Training” at www.cpars.gov
- For CPARS/PPIRS assistance contact the dedicated help desk at 207-438-1690

Appendix A

Include term and conditions (FOA and Award Term and Condition for Recipient Integrity and Performance Matters) in FOAs and awards that may include more than \$500,000 over the period of performance (CFR 200.210).

FOA TERM AND CONDITION to be inserted in Section V part B:

REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (DECEMBER 2015):

DOE, prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313);

The applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM;

DOE will consider any written comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in §200.205 Federal awarding agency review of risk posed by applicants.

Discontinued. Updates to 2 CFR 200

Appendix B

Include term and conditions (FOA and Award Term and Condition for Recipient Integrity and Performance Matters) in FOAs and awards that may include more than \$500,000 over the period of performance (CFR 200.210).

AWARD TERM AND CONDITION:

REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (DECEMBER 2015)

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-213, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached final disposition during the most recent five year period; and

c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

(3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of

either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

(4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or A. Reporting of Matters Related to Recipient Integrity and Performance

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

Discontinued. Updates to 2 CFR 200