

Uniform Commercial Code (UCC) Financing Statement Process for For-Profit Recipients (Prime and Subrecipient(s))

For-profit recipients of DOE financial assistance fall under specific Federal regulations with regard to purchases of property and equipment. In order to make, and be reimbursed for certain equipment purchases, the for-profit recipient must file UCC financing statements on the equipment in the state where the equipment will be located. See § 910.360(b)(4) below.

REGULATIONS:

2 CFR §910.360 Real property and equipment.

(a) *Prior approvals for acquisition with Federal funds.* Recipients may purchase real property or equipment with an acquisition cost per unit of \$5,000 or more in whole or in part with Federal funds only with the prior written approval of the contracting officer or in accordance with express award terms.

(b) *Title.* Unless a statute specifically authorizes and the award specifies that title to property vests unconditionally in the recipient, title to real property or equipment vests in the recipient, subject to all terms and conditions of the award and that the recipient shall:

(1) Use 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;

(2) Not encumber or permit any encumbrance on the real property or equipment without the prior written approval of the contracting officer;

(3) Use and dispose of the real property or equipment in accordance with paragraphs (e), (f), and (g) of this section; and

(4) Properly record, and consent to the Department's ability to properly record if the recipient fails to do so, UCC financing statement(s) for all equipment purchased with Federal funds (Financial assistance awards made under the Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) program are exempt from this requirement unless otherwise specified within the grant agreement); such a filing is required when the Federal share of the financial assistance agreement is more than \$1,000,000, and the Contracting Officer may require it in his or her discretion when the Federal share is less than \$1,000,000. These financing statement(s) must be approved in writing by the contracting officer prior to the recording, and they shall provide notice that the recipient's title to all equipment (not real property) purchased with Federal funds under the financial assistance agreement is conditional pursuant to the terms of this section, and that the Government retains an undivided

reversionary interest in the equipment. **The UCC financing statement(s) must be filed before the contracting officer may reimburse the recipient for the Federal share of the equipment unless otherwise provided for in the relevant financial assistance agreement.** The recipient shall further make any amendments to the financing statements or additional recordings, including appropriate continuation statements, as necessary or as the contracting officer may direct.

(c) *Remedies.* If the recipient fails at any time to comply with any of the conditions or requirements of paragraph (b) of this section, then the contracting officer may:

- (1) Notify the recipient of noncompliance in accordance with 2 CFR 200.338, which may lead to suspension or termination of the award;
- (2) Impose special award conditions pursuant to 2 CFR 200.205 and 200.207 as amended by 2 CFR 910.372;
- (3) Issue instructions to the recipient for disposition of the property in accordance with paragraph (g) of this section;
- (4) In the case of a failure to properly record UCC financing statement(s) in accordance with paragraph (b)(4) of this section, effect such a recording; and
- (5) Apply other remedies that may be legally available.

Equipment:

Per 2 CFR 200.33 Equipment means tangible personal property (including information technology systems) 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.

Equipment Components:

If the project purchased equipment (as defined above) but the equipment in question is/are components or subcomponents of a greater whole (assembled) piece of equipment, the Contracting Officer must determine whether the assembly components should each have their own individual UCC Financing Statements, or, whether the assembled whole unit alone (made up of the component equipment) should have a single UCC Financing Statement. Contact the Contracting Officer assigned to your award for this determination.

Cost Share:

The non-federal cost share portion of the project (20% for research and development projects; 50% for demonstration and commercialization projects) is addressed in 2 CFR 910.360 (d): Title to and Federal interest in real property or equipment offered as cost-share. As provided in 2 CFR 200.306(h), depending upon the purpose of the Federal award, a recipient may offer the fair market value of real property or equipment that is purchased with recipient's funds or that is donated by a third party to meet a portion of any required cost sharing or matching. If a resulting award includes such property as a portion of the recipient's cost share, the recipient holds conditional title to the property and the Government has an undivided reversionary interest in the share of the property value equal to the Federal participation in the project. The property is treated as if it had been acquired in part with Federal funds, and is subject to the provisions of 2 CFR 910.360 paragraph (b) and to the provisions of 2 CFR 200.311 and 200.313. Hence, any equipment donated by the recipient or any member of the project team as "cost share" will be treated as if it were purchased with Federal funds at the cost sharing proportion specified in the award type.

IMPLEMENTATION:

If a for-profit recipient or subrecipient desires to purchase a piece of equipment for their project, and the per-unit dollar value of said equipment is \$5,000 or more, and the Federal share of the financial assistance agreement is more than \$1M, the recipient or subrecipient must file a UCC financing statement. The equipment must be included in the approved budget or approved by a Contracting Officer.

A UCC financing statement is essentially a lien on the piece of equipment, which states that the Federal government has an undivided reversionary interest in the equipment, and as such the equipment cannot be sold or used as collateral for a loan (encumbered) without the Contracting Officer's approval.

The for-profit recipient or subrecipient must file the UCC financing statement(s) (for the relevant state or territory in which the equipment is located) and pay the costs for such filings.

The initial UCC financing statement is filed using the UCC1. For additional pieces of equipment not specified in the award budget, TBD equipment, or equipment needed in future budget periods, the recipient can file an amendment to the original UCC1 financing statement, by submitting the UCC3 financing statement amendment after approval is received by the Contracting Officer.

When filling out the initial UCC1 financing statement, the recipient of the financial assistance award is the "Debtor" (block 1.), and the United States Department of Energy, 1000 Independence Ave SW, Washington, DC 20585 is the "Secured Party" (block 3.).

Each UCC financing statement or amendment is to be filed with the applicable state or territorial UCC office, in which the piece of equipment will reside. Each state and territory, although employing the same UCC1 financing statement and/or UCC3 financing statement amendment, will have slightly different instructions as to where to file, and the costs that are charged for each filing. In order to determine what charges apply and what offices are involved, it is recommended that the recipient perform an internet search employing the terms “**UCC Financing Statement X**”, where X is the state in which the piece of equipment will be located. Additionally, some states have on-line versions of the UCC1 and UCC3 which cost less, but are character limited. Hence, it is incumbent upon the recipient to find the least cost method of submitting the required UCC financing statements and/or amendments for the particular state or territory in which the equipment will be located.

At a minimum, the recipient must have stated in their UCC financing statement; UCC1 block 4. or UCC3 block 8. (Collateral):

1. “Title to all equipment (not real property) purchased with Federal funds under this financial assistance agreement is conditional pursuant to the terms of 2 CFR 910.360, and the Federal government retains an undivided reversionary interest in the equipment at the Federal cost-share proportion specified in the award terms and conditions.”

And in UCC1 block 8. or UCC3 block 10. (Optional Filer Reference Data):

2. Federal Award Identification Number (e.g., DE-EE000XXXX) as this is the unique number identified with the recipient’s award / project.

Additionally, all equipment purchased with a per unit cost of \$5,000 or more should be listed on the UCC financing statement [block 4. in UCC1 (financing statement), block 8. in UCC3 (financing statement amendment)] with a physical description, serial number, or other means of identification.

Note: All costs associated with filing UCC financing statements, UCC financing statement amendments, and UCC financing statement terminations, are allowable and allocable costs eligible to be charged to the Federal award.

REQUIREMENTS:

In order to be reimbursed for purchasing a piece of equipment, the recipient must send the Contracting Officer a copy of their proposed UCC financing statement with the language specified in **IMPLEMENTATION:** 1. (above), receive the approval of the Contracting Officer for the UCC financing statement, and finally, submit a copy of the filed, approved, UCC financing

statement to the Project Management Center (PMC) database, at which point the recipient may be reimbursed for the equipment purchase.

1. The financing statement(s) must be approved in writing by the Contracting Officer prior to being filed with the relevant state UCC office, and shall provide notice that the recipient's title to all equipment (not real property) purchased with Federal funds under the financial assistance agreement is conditional pursuant to the terms of 2 CFR 910.360, and that the Federal government retains an undivided reversionary interest in the equipment. A description of all of the equipment should be included as well (as described above). **Prior to filing the UCC financing statement with your state, please send the draft form to the DOE Project Officer and DOE Award Administrator listed on page 2. of the Assistance Agreement. Once you receive written Contracting Officer approval, you may proceed with filing the form with your state.**
2. The recipient must file the UCC financing statement(s) and amendments with the applicable state or territorial UCC office before the Contracting Officer may reimburse the recipient for the Federal share of the equipment, unless otherwise provided for in the relevant financial assistance agreement.
3. The for-profit recipient must submit a copy of the approved and filed UCC financing statement and/or amendment to the PMC. This is associated with a check box on the Federal Assistance Reporting Checklist (attached to the Assistance Agreement), which will have "A" (Within (5) calendar days after the event or as specified) selected.
Please upload the final form that has been filed with your state to the EERE PMC website (<https://www.eere-pmc.energy.gov/SubmitReports.aspx>) as 'Other' and notify the DOE Project Officer and DOE Award Administrator via email that the form has been uploaded. The for-profit recipient should also submit a copy of the filed UCC form in VIPERS as a supporting document to their invoice.
Once the final form that has been filed with your state has been uploaded to the EERE PMC website, request for reimbursement may be submitted.
4. **For-profit subrecipients shall submit the UCC financing statements to the prime recipient, who will, in turn, provide them to DOE in the method stated above.**

CONTINUATION:

UCC financing statements and financing statement amendments have a five (5) year life, and as such should be continued if the project period of performance exceeds the life of the UCC financing statement. To continue a UCC financing statement, the recipient must file a UCC financing statement amendment (UCC 3) and check box number 4. "Continuation" which will extend the life of the UCC financing statement for the additional period provided by applicable

law (5 years). The continuation filing references the original UCC financing statement or UCC financing statement amendment which was first filed for the equipment in question.

TERMINATION:

UCC financing statements are terminated in a similar manner to filing a UCC financing statement amendment for a continuation, but the recipient should check box number 2. "Termination". The termination filing references the original UCC financing statement or UCC financing statement amendment which was first filed for the equipment in question.

DISPOSITION:

When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency in accordance with 2 CFR 910.360. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.