

MAR 30 2015



UNITED STATES DEPARTMENT OF COMMERCE  
Chief Financial Officer  
Assistant Secretary for Administration  
Washington, D.C. 20230

**FINANCIAL ASSISTANCE MEMORANDUM 2015-01**

**ACTION**

**MEMORANDUM FOR: DEPARTMENT OF COMMERCE GRANTS COUNCIL**

**Signed**

**FROM:**

Barry E. Berkowitz  
Senior Procurement Executive  
and Director for Acquisition Management

**SUBJECT:**

Sections 523 of the Commerce Justice,  
Science and Related Agencies Appropriations Act, 2015 and  
Sections 744 and 745 of the Financial Services and General  
Government Appropriations Act, 2015: Certifications Regarding  
Federal Felony and Federal Criminal Tax Convictions, Unpaid  
Federal Tax Assessments and Delinquent Federal Tax Returns

***Purpose***

The purpose of this Financial Assistance Memorandum is to provide guidance to Grant Officers and Program Officials for complying with the general prohibitions and certification requirements pertaining to the use of appropriated funding under Section 523 of Division B and Sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) (FY 2015 Act). This memorandum is applicable to: (1) all financial assistance awards and to amendments to financial assistance awards obligating more than \$5 million in appropriated funds made available under the FY 2015 Act; and to (2) all financial assistance awards and amendments to financial assistance awards issued to corporations that obligate any amount of appropriated funds made available by the FY 2015 Act. In addition, as noted in the section below entitled "Effective Date, Order of Succession and Point of Contact," if future appropriations laws contain similar requirements, Grants Officers and Program Officials may continue implementing the requirements of this Financial Assistance Memorandum until a superseding memorandum is issued.

***Background***

Section 523 of Division B and Sections 744 and 745 of Division E of the FY 2015 Act contain certain funding prohibitions and certification requirements applicable to financial assistance awards issued with appropriated funds made available under the FY 2015 Act.

For financial assistance awards obligating more than \$5 million in appropriated funding made available under the FY 2015 Act, Section 523 of Division B of the FY 2015 Act requires Commerce to obtain written certification from the award recipient that it: (i) filed all required Federal tax returns for the three years immediately preceding the certification; (ii) has not been convicted of a criminal offense under the Internal Revenue Code of 1986, as amended; and (iii) has not been notified, more than 90 days prior to certification, of any Federal tax assessment

for which liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

In addition, Sections 744 and 745 of Division E of the FY 2015 Act prohibit appropriated funds from being used to issue a financial assistance award, in any amount, to any corporation that: (i) 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, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interest of the Government; and/or (ii) was convicted of a felony criminal violation under any Federal law within the preceding 24 months, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interest of the Government.

### **Required Actions**

#### **1. Certifications Regarding Federal Felony and Federal Criminal Tax Convictions, Unpaid Federal Tax Assessments and Delinquent Federal Tax Returns**

Grant Officers shall:

- a) Provide notice in all Announcements of Federal Funding Opportunity (FFO) and related *Federal Register* Notices (FRN) involving the use of appropriated funding made available under the FY 2015 Act that, as applicable, an authorized representative of the prospective recipient will be required to execute the *Certifications Regarding Federal Felony and Federal Criminal Tax Convictions, Unpaid Federal Tax Assessments and Delinquent Federal Tax Returns* (Attachment A) prior to the issuance of a financial assistance award by the Commerce bureau. Below is sample FFO and FRN language:

In accordance with Section 523 of Division B and Sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) or a future public law, an authorized representative of the selected applicant(s) will be required to provide certain pre-award representations regarding federal felony and federal criminal tax convictions, unpaid federal tax assessments, and delinquent federal tax returns.

- b) To the extent required by Sections 523 of Division B and/or Sections 744 and 745 of Division E of the FY 2015 Act, obtain completed "Certifications Regarding Federal Felony and Federal Criminal Tax Convictions, Unpaid Federal Tax Assessments and Delinquent Federal Tax Returns" from: (i) prospective recipients prior to the issuance of new awards made with appropriated funding made available under the FY 2015 Act; or (ii) current recipients prior to the issuance of an award amendment that would obligate appropriated funding made available under the FY 2015 Act. If the Grants Officer has obtained a Certification using Attachment A of Financial Assistance Memorandum 2014 from a recipient that received FY 2015 funds, that is sufficient as the certifications are substantially similar to the requirements of the FY 2015 Act.

Attachment A to this memorandum includes the required certifications and the below table is intended to assist the bureaus and prospective financial assistance recipients in navigating these certification requirements:

Required Certifications		Award Value	
		Less than or Equal to \$5M in FY 2015 Appropriated Funds	More than \$5M in FY 2015 Appropriated Funds
Awardee Type	Corporations	Part I, Attachment A	Part I & Part II, Attachment A
	Awardees other than Corporations	N/A	Part II, Attachment A

**2. Follow-Up and Remediation of Affirmative Representation**

In the event of an affirmative response from a prospective or current recipient, Grant Officers shall:

- a) Notify the Suspension and Debarment Official prior to award; and
- b) Comply with the determination of eligibility by the Suspension and Debarment Official.

In such cases, Grants Officers are also encouraged to contact the Department’s Grants Management Division for guidance and the OGC Federal Assistance Law Division for legal support.

**Effective Date, Order of Succession and Point of Contact**

The requirements set forth in this Financial Assistance Memorandum 2015-01 are effective immediately and supersede the requirements set forth in Financial Assistance Memorandum 2014-01 (April 23, 2014). This Financial Assistance Memorandum 2015-01 shall remain in effect until rescinded or replaced by a superseding Financial Assistance Memorandum. If future appropriations contain similar requirements, Grants Officers may continue to implement the requirements of this memorandum until a superseding Financial Assistance Memorandum or similar guidance is issued.

The point of contact for this matter is Gary Johnson, 202-482-1679, [gjohnso3@doc.gov](mailto:gjohnso3@doc.gov).

**Attachment A** – Certifications Regarding Federal Felony and Federal Criminal Tax Convictions, Unpaid Federal Tax Assessments and Delinquent Federal Tax Returns

ATTACHMENT A

**Certifications Regarding Federal Felony and Federal Criminal Tax Convictions,  
Unpaid Federal Tax Assessments and Delinquent Federal Tax Returns**

As discussed in Part I and Part II below, Section 523 of Division B and Sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) (FY 2015 Act), contain certain funding prohibitions and certification requirements applicable to financial assistance awards issued with appropriated funds made available under the FY 2015 Act. Based on these requirements, the Department of Commerce requires the following certifications from prospective financial assistance award recipients (also referred to below as applicants):

Required Certifications		Award Value	
		Less than or Equal to \$5M in FY 2015 Appropriated Funds	More than \$5M in FY 2015 Appropriated Funds
Awardee Type	Corporations	Part I	Part I & Part II,
	Awardees other than Corporations	Certification Not Required	Part II

**PART I – Certifications from Corporations**

In accordance with Sections 744 and 745 Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) (FY 2015 Act), none of the appropriated funds made available by the FY 2015 Act may be used to issue a financial assistance award to any corporation that:

- (a) 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, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; and/or
- (b) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

For purposes of the below certification, a corporation is defined as an entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of

the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, and the U.S. Virgin Islands. (Note that this includes both for-profit and non-profit organizations.)

The below certification is required for all new financial assistance awards, and for all amendments to existing financial assistance awards, that are made to corporations (as defined above) and that are funded with applicable appropriated funds made available to the Department of Commerce. This certification is further required to the extent that other appropriation acts contain the same or substantively similar prohibitions against the issuance of financial assistance awards to certain corporations.

Instructions: All applicants that are corporations (as defined above) must complete paragraphs (1) and (2) below, which must be signed below by an authorized representative of the corporation. Applicants that are not corporations are not required to complete this representation.

(1) \_\_\_\_\_ (insert name of corporation) certifies that it is \_\_\_ is not \_\_\_ (check one) a 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.

(2) \_\_\_\_\_ (insert name of corporation) certifies that it is \_\_\_ is not \_\_\_ (check one) a corporation that was convicted of a felony criminal violation under a Federal law within the 24 months preceding the signature date of this Representation.

By: \_\_\_\_\_  
[Typed name and title of the signing individual]  
[Typed phone number of the signing individual]  
[Typed email address of the signing individual]

Date: \_\_\_\_\_

## **PART II – Certifications for Awards Over \$5 Million**

For financial assistance awards in excess of \$5 million in FY 2015 appropriated funding, Section 523 of Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) (FY 2015 Act) requires Commerce to obtain written certification from all recipients that:

- (a) To the best of its knowledge and belief, the recipient has filed all Federal tax returns required during the three years preceding the certification;
- (b) The recipient has not been convicted of a criminal offense under the Internal Revenue Code of 1986; and/or

- (c) The recipient has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

The below certification is required from all recipients receiving financial assistance awards in excess of \$5 million and funded with applicable appropriations. This certification is further required to the extent that other appropriation acts contain the same or substantively similar prohibitions against the issuance of financial assistance to certain recipients of financial assistance awards in excess of \$5 million.

Instructions: All applicants receiving financial assistance awards in excess of \$5 million and funded with applicable appropriations must complete paragraphs (1), (2) and (3) below, which must be signed below by an authorized representative of the applicant.

- (1) \_\_\_\_\_ (insert name of applicant) certifies that it has \_\_\_\_ or has not \_\_\_\_ (check one) filed all Federal tax returns required during the three years preceding this certification;
- (2) \_\_\_\_\_ (insert name of applicant) certifies that it has \_\_\_\_ or has not \_\_\_\_ (check one) been convicted of a criminal offense under the Internal Revenue Code of 1986, as amended; and/or
- (3) \_\_\_\_\_ (insert name of applicant) certifies that it has \_\_\_\_ or has not \_\_\_\_ (check one) been notified, more than 90 days prior to this certification, of any Federal tax assessment for which liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

By: \_\_\_\_\_  
[Typed name and title of the signing individual]  
[Typed phone number of the signing individual]  
[Typed email address of the signing individual]

Date: \_\_\_\_\_