



U.S. DEPARTMENT OF
ENERGY

Office of
Science

DOE Interim Conflict of Interest Policy

Presented to the Council on Government Relations

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DOE Activities

- ▶ DOE was once described as the agency of quarks, quagmires, weapons, and windmills
- ▶ DOE's R&D activities run the full spectrum from basic/fundamental research to applied research to development and demonstration
- ▶ DOE also has discretionary grantmaking programs beyond R&D in areas ranging from infrastructure to assistance
- ▶ DOE also has formula or block grant programs
- ▶ Departmental policies need to account for this span of activity

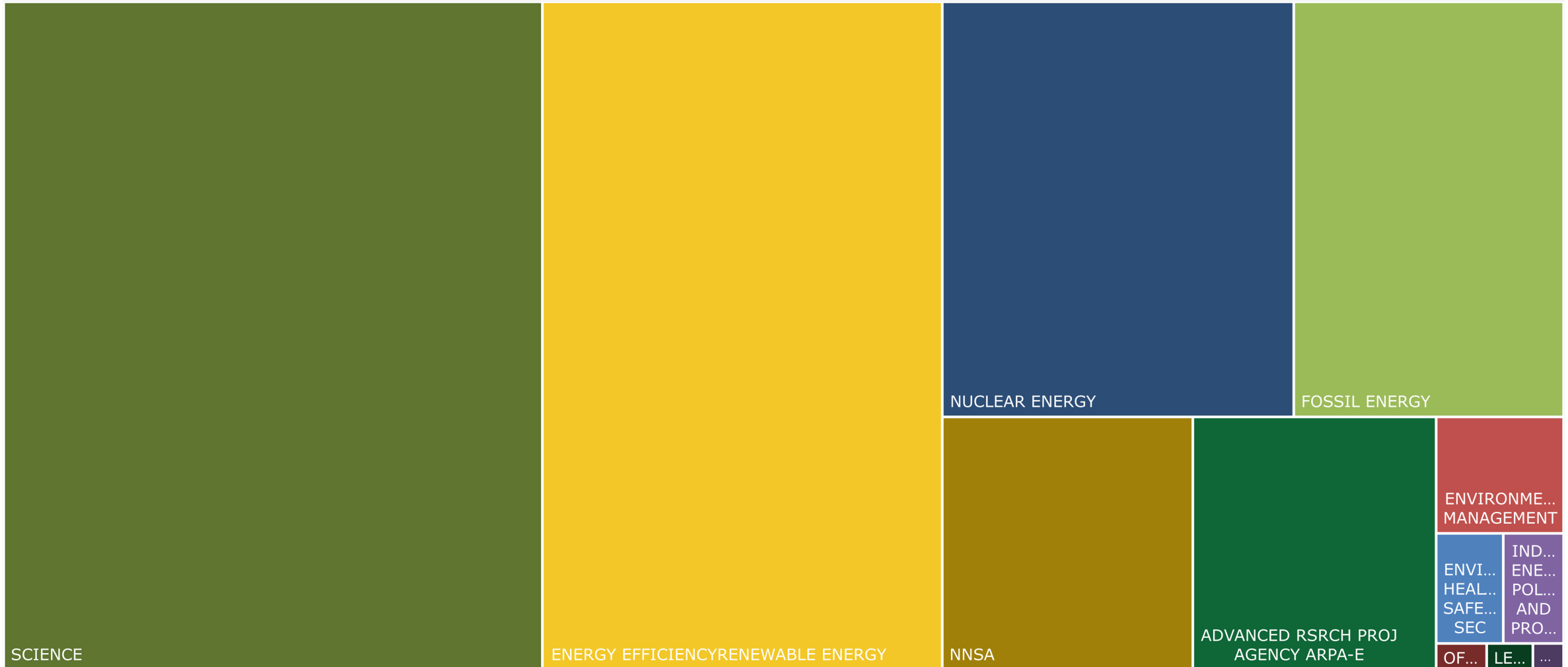
Diving into some data

- ▶ FY2021 financial assistance spending pulled from USAspending.gov
- ▶ Only reports government share of expenditures – cost sharing is not reported
- ▶ Demonstrates substantial differences across the Department



DOE Grantmaking by Program (FY2021)

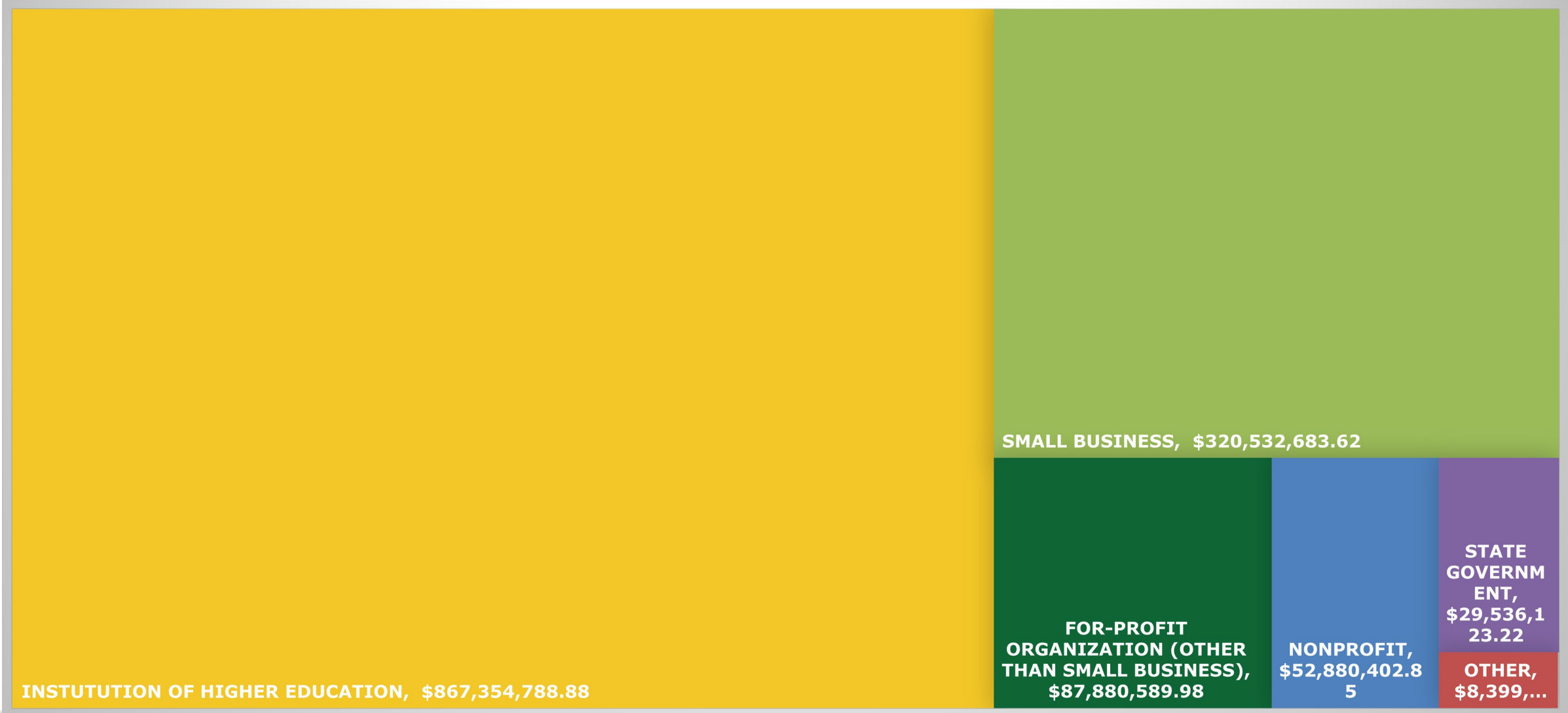
FY21 Grant Obligations by Program



If a tabular format is easier

OFFICE OF SCIENCE (OS)	\$ 1,366,677,435.77
ENERGY EFFICIENCY/RENEWABLE ENERGY (EERE)	\$ 1,014,807,391.21
NUCLEAR ENERGY (NE)	\$ 553,826,417.87
FOSSIL ENERGY (FE)	\$ 425,505,248.20
NATIONAL NUCLEAR SECURITY ADMINISTRATION (NNSA)	\$ 240,578,343.38
ADVANCED RESEARCH PROJECTS AGENCY-ENERGY (ARPA-E)	\$ 233,858,561.98
ENVIRONMENTAL MANAGEMENT (EM)	\$ 56,335,396.44
ENVIRONMENT, HEALTH, SAFETY & SECURITY	\$ 28,059,726.00
INDIAN ENERGY POLICY AND PROGRAMS	\$ 25,225,072.21
CYBERSECURITY, ENERGY SECURITY, AND EMERGENCY RESPONSE (CESER)	\$ 5,101,009.66
LEGACY MANAGEMENT	\$ 4,673,432.57
OFFICE OF POLICY	\$ 1,382,365.06
OFFICE OF ELECTRICITY (OE)	\$ 700,926.93
ENERGY INFORMATION ADMINISTRATION	\$ 523,275.00
ECONOMIC IMPACT & DIVERSITY	\$ 503,062.52

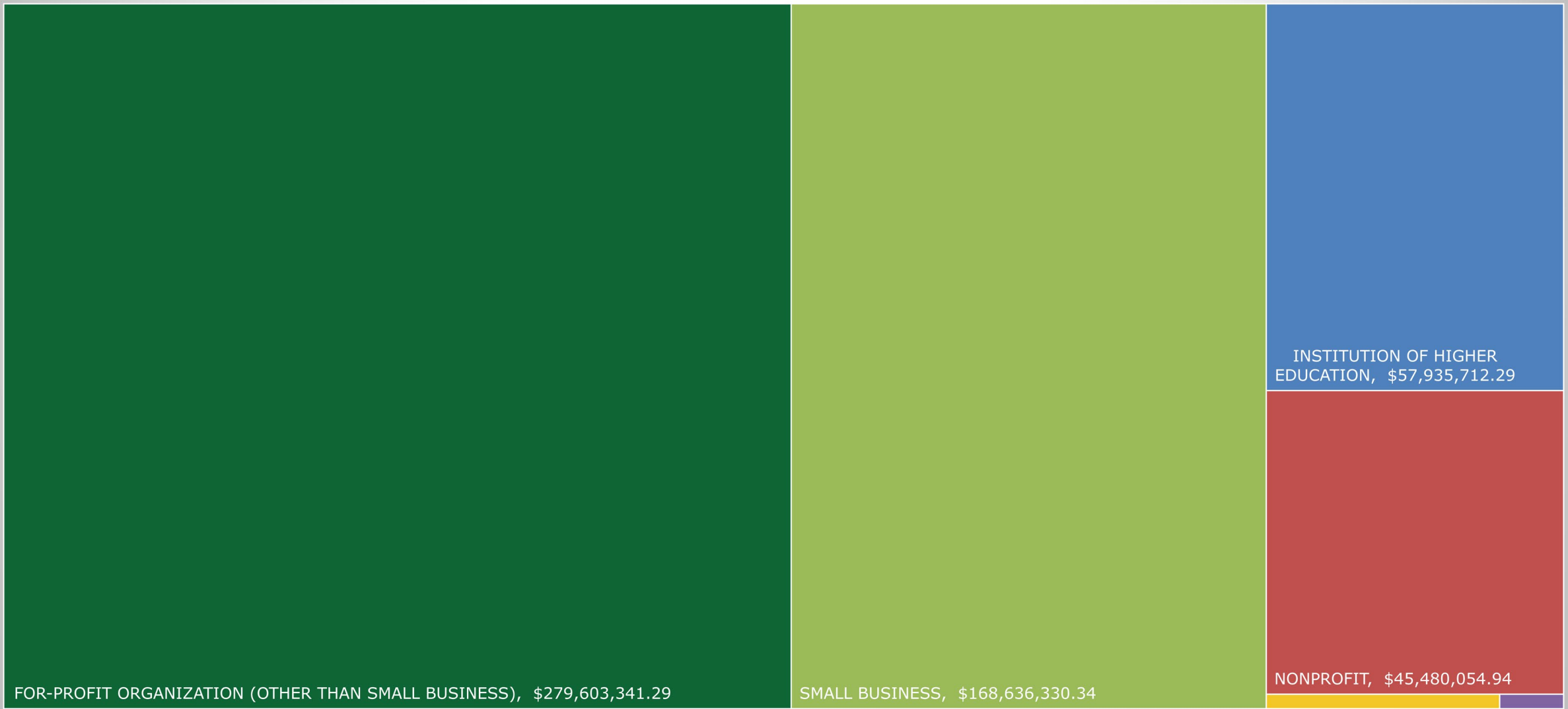
Office of Science Grantees, FY21



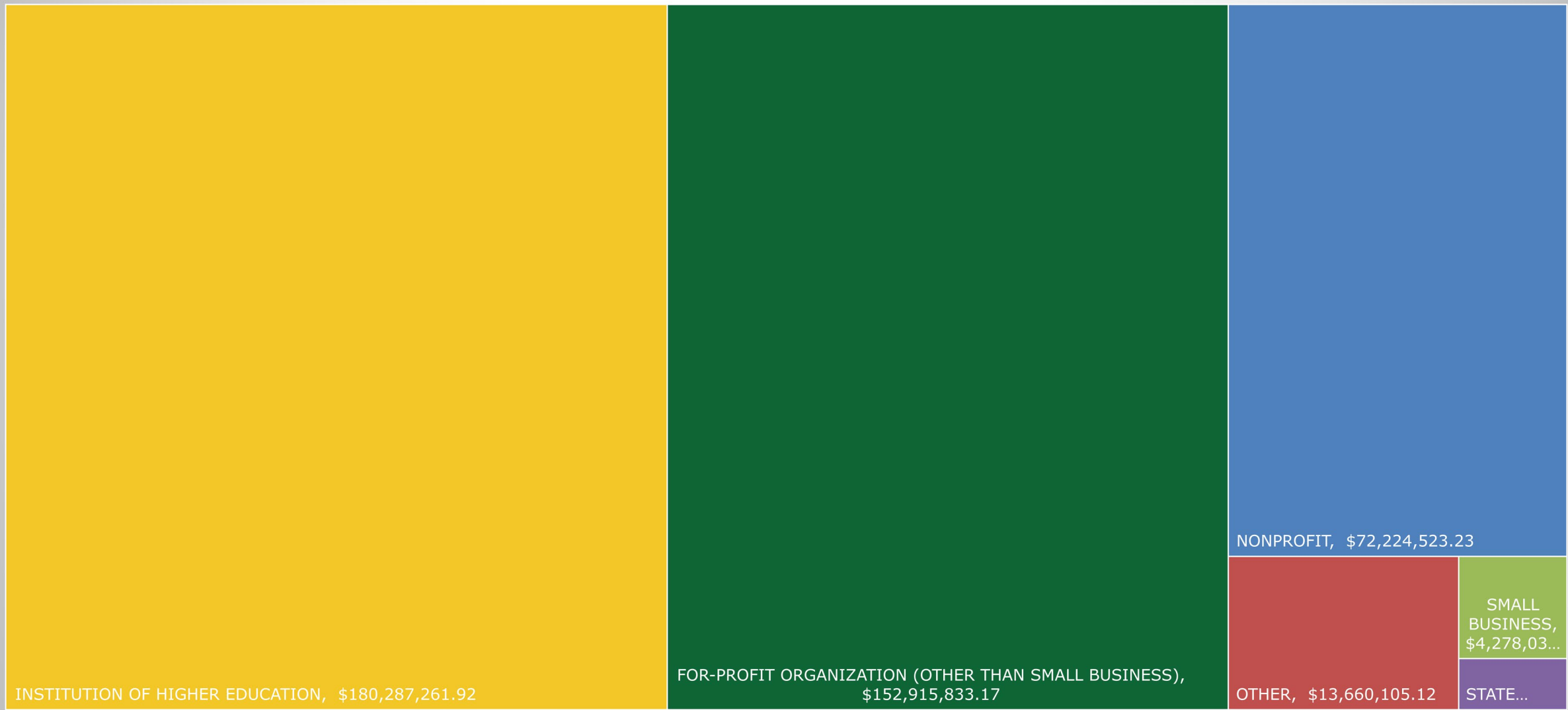
EERE Grantees, FY21



Nuclear Energy Grantees, FY21



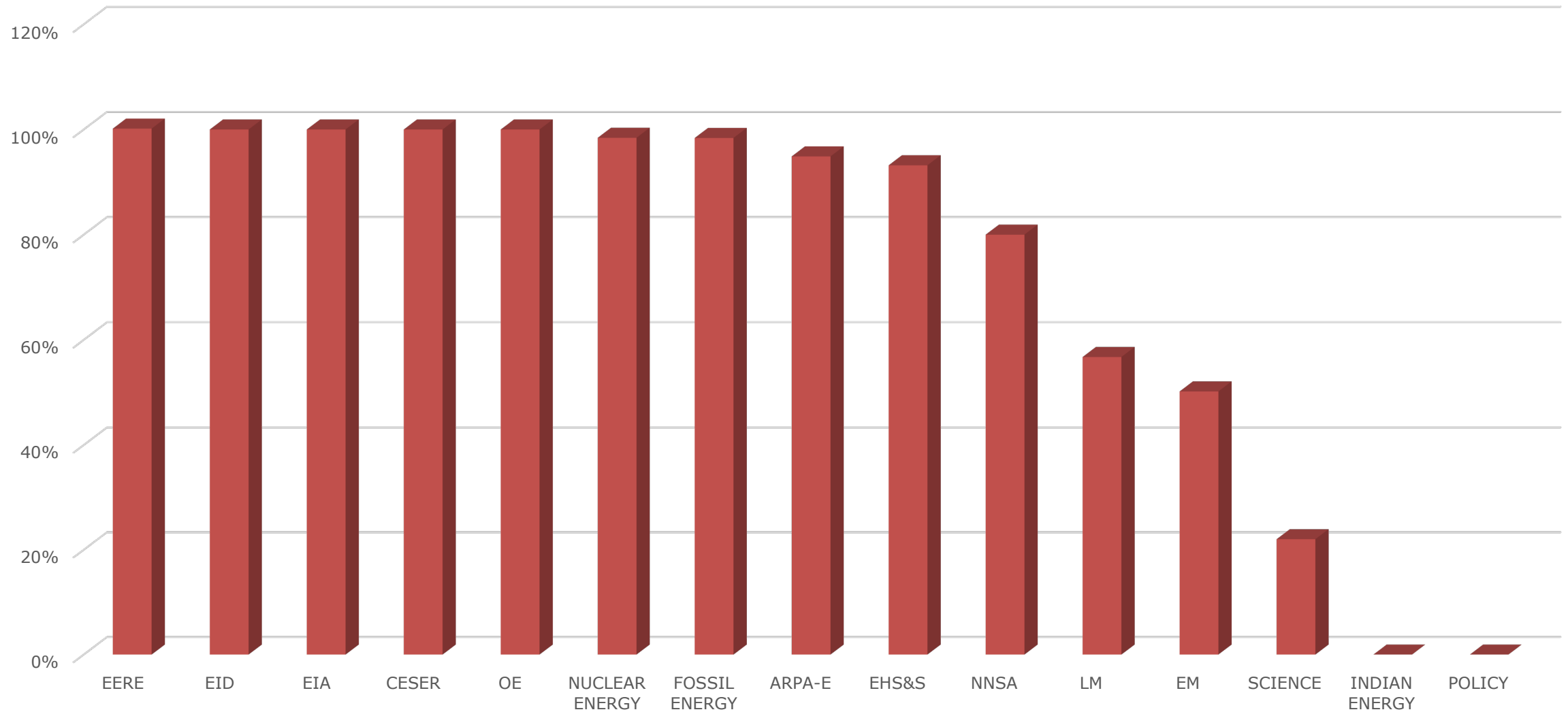
Fossil Energy Grantees, FY21



ARPA-E Grantees, FY21



FY21, Percentage of Program Discretionary Grant Spending Awarded as Cooperative Agreements



Why did DOE establish an Interim FCOI Policy

- ▶ 1. To comply with 2 CFR 200.112
- ▶ 2. To respond to a GAO report (GAO-21-130)
- ▶ 3. To create an interim measure prior to
 - ▶ A. Agency rulemaking for a more comprehensive disclosure policy -- *forthcoming*
 - ▶ B. Whole-of-government efforts coordinated through OSTP under NSPM-33

DOE policies

- ▶ A DOE Financial Assistance Letter or a DOE Order is not self-executing against applicants and awardees.
- ▶ Rather, it only takes effect when its clauses are incorporated in a Funding Opportunity Announcement and/or the terms and conditions of an award.
- ▶ The result is a rolling, staggered implementation across DOE

- ▶ NB: DOE Orders are binding on DOE employees. Some Orders come with a Contractor Requirements Document to be incorporated into contracts, usually impacting the National Laboratory complex.

DOE Interim COI policy

- ▶ Modeled after the PHS FCOI policy
- ▶ Research universities already have internal policies and procedures to conform
- ▶ Flexibility built into policy at program office levels
 - ▶ Risks are different between the technology/applied offices and basic research
 - ▶ Grantee communities look very different
- ▶ FAQ document in internal review

Definitions

- ▶ **Significant financial interest or relationship**
 - ▶ Interest implies ownership of something
 - ▶ Relationship is more elastic to cover other financial arrangements without transfers of control
- ▶ **Investigator is anyone who can affect purpose, design, conduct, reporting, or funding of R&D**
 - ▶ Design, conduct, and reporting taken from PHS and common understanding of senior/key person.
 - ▶ Funding included in NSPM-33 and Implementation Guidance
 - ▶ Purpose aligns with the 2021 NDAA (Sec. 223) concept of “scientific development” and ability to cause change in scope

Relatedness and reasonableness

- ▶ DOE's R&D extends beyond institutions of higher education
- ▶ Thought Experiment: Cooperative agreement made to mid-size manufacturing firm for R&D about widgets
 - ▶ VP for Engineering negotiating for a job with a competing firm
 - ▶ While not directly engaged in the award, could influence the project
 - ▶ Has a financial relationship, not necessarily a financial interest
- ▶ Policy requires disclosure when reasonable person determines that situation could impact sponsored R&D

DOE's sensitivity to intellectual property risks

- ▶ Foreign government talent recruitment programs are a recognized risk to IP diversion
 - ▶ Not directly addressed by interim COI policy, but note that any significant financial interest from any source is covered, so there is likely some overlap
- ▶ **Statutory regime**
 - ▶ DOE has unique obligations with IP in special nuclear materials, atomic energy, and defense programs, as well as “enhanced” US manufacturing requirements and other IP rights that attach to all subject inventions



Investigators and Participants

- ▶ No desire to expand beyond investigators (aka senior/key persons) for university-based research conducted on campus
- ▶ Risks may differ, e.g.,:
 - ▶ If a grad student or postdoc is the university's liaison to an engineering firm building a device
 - ▶ If grad students or postdocs are on long-term assignment conducting research off-campus (at a DOE lab, an international research center, or other entity)
 - ▶ If a grad student or postdoc is supporting R&D of an energy technology that is also the focus of commercialization efforts.
- ▶ Office of Science (basic research) is solely using the PHS definition of investigators. Applied technology programs need the additional flexibility

Mandatory Reporting

- ▶ All FCOI, regardless of management and mitigation
 - ▶ Appropriate in programs conducting applied R&D where risks are greatest
- ▶ Only unmanaged or unmanageable FCOI
 - ▶ Appropriate in programs conducting basic research with minimal risks
- ▶ Disclosure to Grants/Contracting Officer, not program manager

Certifications

- ▶ Certification language provided to DOE from another agency
- ▶ We recognize this language differs from what is used by other science agencies
- ▶ We hope that the interagency process on current and pending support and biographical sketches will result in a consistent and harmonized language
- ▶ At present, policy requires certification from investigator to institution

Subs

- ▶ Policy flows from prime to subs
- ▶ Prime *may* consider personnel at a sub as “Investigators”

Organizational COI

- ▶ Included in GAO reports
- ▶ Included in Interim COI policy
- ▶ Defined in 2 CFR 200.318 under procurement standards
 - ▶ Intended to force awareness of less-than-arm's-length contracting
 - ▶ Mostly an issue in commercial conglomerates engaged in self-dealing
- ▶ In university settings, be cognizant of
 - ▶ Captive foundations
 - ▶ Faculty self-dealing with their own companies

DOE Order 142.3B

- ▶ Orders are how DOE imposes requirements on its personnel, and, when written into contracts, onto its contractors
- ▶ Covered subjects
 - ▶ Telework
 - ▶ Employee Discipline
 - ▶ Cybersecurity
 - ▶ Records Management
 - ▶ Foreign visitor access

Foreign National Access Program

- ▶ Generally, inapplicable against work done on campus
- ▶ If written into terms and conditions of award, becomes applicable to that award
- ▶ Governs how foreign nationals may obtain access to any DOE site or facility
 - ▶ Whether supported by a university grant
 - ▶ Whether employed by DOE or one of its contractors
 - ▶ Whether a visitor off-the-street

Cautionary Notes

- ▶ Any FOA may restrict participating individuals to be US nationals
- ▶ Any FOA may require that all work be performed in the US
- ▶ Any FOA may restrict foreign-owned entities from participating
- ▶ Under 2 CFR 200.206, agencies must conduct a review of risk prior to making award. Government resources may be consulted in reviewing risks