



Department of Energy Interim Conflict of Interest Policy for Financial Assistance Frequently Asked Questions

1. What is the purpose of the Department of Energy (DOE) Interim Conflict of Interest (COI) Policy ("Interim COI Policy")?

Response: The Department of Energy (DOE) Interim Conflict of Interest (COI) Policy ("Interim COI Policy") promotes objectivity in research by establishing standards that provide a reasonable expectation that the design, conduct, and reporting of research performed under DOE financial assistance awards (e.g., grants and cooperative agreements) will be free from bias resulting from investigator financial conflicts of interest or organizational conflicts of interest.

2. Will DOE be developing a final COI policy?

Response: DOE is establishing a COI/conflict of commitment (COC) policy to meet the requirements of 2 CFR 200.112 and as part of a government-wide effort led by the White House Office of Science & Technology Policy (OSTP) to implement the National Security Presidential Memorandum-33 (NSPM-33)N. DOE intends to develop a final COI/COC policy through the rulemaking process. DOE plans to publish a notice of proposed rulemaking (NPR) to initiate the rulemaking process. The NPR will be coordinated with the White House OSTP.

3. What is the purpose of the DOE Financial Assistance Letter (FAL) [FAL 2022-02]?

Response: The purpose of this FAL is to provide information and guidance regarding the Department of Energy's (DOE or Department) implementation of 2 CFR 200.112, Conflict of interest.¹

4. Which entities is the Interim COI Policy applicable to?

Response: The Interim COI Policy is applicable to each non-Federal entity that applies for and each non-Federal entity that receives a DOE financial assistance award and, through the implementation of this

¹ Pursuant to 2 CFR 200.112, each "Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy."

policy by the non-Federal entity, to each investigator who is planning to participate in or is participating in the project funded wholly or in part under the DOE financial assistance award, and to each non-federal entity sub-recipient under the award.

The DOE Interim COI Policy does not apply to Office of Indian Energy and Phase I Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) applications and awards.

5. Does the Interim COI Policy apply to foreign non-Federal entities and international organizations?

Response: Yes. The Interim COI Policy applies to foreign non-Federal entities and international organizations that apply for or participate in a DOE financial assistance award as either recipient non-Federal entities or subrecipient non-Federal entities.

6. When are non-Federal entities required to comply with the Interim COI Policy, and how does the 180-day period referenced in the Implementation section of FAL 2022-02 come into play?

Response:

For Office of Science: The Interim COI Policy is effective once it is written into new and renewal financial award terms and conditions. Once written into an award's terms and conditions, the recipient of the award has a 180-day period to come into full compliance with the Interim COI Policy.

For other DOE/NNSA Offices: It is understood that non-Federal entities and individuals receiving DOE financial assistance awards will need sufficient time to come into full compliance with DOE's Interim COI Policy. To provide sufficient lead time, DOE/NNSA Offices allow for a staggered implementation. Specifically, prior to award, applicants selected for award negotiations must: ensure all investigators complete their significant financial disclosures; review the disclosures; determine whether a financial conflict of interest (FCOI) exists; develop and implement a management plan for FCOIs; and provide DOE with an initial FCOI report that includes all FCOIs (i.e., managed and unmanaged/ unmanageable). Recipients will have 180 days from the date of the award to come into full compliance with the other requirements set forth in the Interim COI Policy. Prior to award, the applicant must certify that it is, or will be within 180 days of the date of the award, compliant with all requirements in the Interim COI Policy.

7. Is the Interim COI Policy retroactive?

Response: No. Through their own policies, however, non-Federal entities may choose to apply the requirements of the Interim COI Policy to, for example, all active DOE awards. If an award was issued prior to December 20, 2021, the date of the Interim COI Policy, but receives additional funding after December 20, 2021, then the DOE Program Office issuing the award will determine if the award will be subject to the Interim COI Policy as a condition of receiving the additional funding.

REPORTING REQUIREMENTS: COVERAGE AND COMPLIANCE

8. Who is required to disclose financial interests?

Response: Investigators who are planning to participate on, or are participating on, a DOE financial assistance award, must disclose significant financial interests (and those of the investigator's spouse and dependent children) to the designated official(s) of the non-Federal entity. The disclosures must include the certification language provided in the Interim COI Policy. See section IV(e)(4) of the Interim COI Policy and Questions 31 and 32.

"Investigator" means the principal Investigator (PI) and any person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. The term "investigator" may include collaborators, consultants, or graduate (Master's or PhD) students where individuals holding those positions otherwise meet the definition of investigator.

A project's "purpose" has its common meaning -- the reason for which a project is proposed or carried out. That reason may include, for example, the desire to improve a technology or solve a specific energy-related problem. Individuals responsible for the "purpose" of a project may not be the same individuals responsible for the "design, conduct and reporting", but their financial interests could still bias the project because the purpose can underpin the whole reason for proposing the project.

DOE Program Offices have the discretion to expand the definition of investigator to include any person who *participates* in the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. Such expansion will be specified in the applicable funding opportunity announcement and/or terms and conditions of the financial assistance award.

9. I am a post-doctoral fellow participating on a DOE financial assistance award. Does this Interim COI Policy apply to me?

Response: If your role on the project meets the definition of "investigator," the Interim COI Policy applies to you. The term "investigator" is defined in section III of the Interim COI Policy. Also, DOE Program Offices may expand the definition, and such expansion will be noted in the applicable funding opportunity announcement and/or the terms and conditions of the financial assistance award. You should consult with your non-Federal entity's designated official(s) to ensure you comply with the appropriate requirements.

10. I am a graduate student working on research funded by a DOE financial assistance award. Am I subject to the requirements of the Interim COI Policy?

Response: See the response to Question 9, above. If your role on the project meets the definition of "investigator," as that term is defined in the applicable DOE funding opportunity announcement and the

terms and conditions of the financial assistance award, the Interim COI Policy applies to you. Be sure to confirm with your non-Federal entity's designated official(s) whether you, as a graduate student, are subject to the Interim COI Policy requirements.

11. May a non-Federal entity have a policy that goes beyond the minimum requirements stated in the Interim COI Policy (e.g., impose more stringent requirements than those in the Interim COI Policy)?

Response: Yes, as long as the non-Federal entity's policies meet the minimum requirements of the Interim COI Policy. If a non-Federal entity adopts a policy that includes more restrictive disclosure thresholds than those in the Interim COI Policy, the non-Federal entity must adhere to the requirements of the non-Federal entity policy's more restrictive standards.

12. For how long must non-Federal entities keep records of financial disclosures and any resulting actions under the non-Federal entity's policy?

Response: All records relating to investigator financial disclosures; the non-Federal entity's review and response to the disclosures; and all actions under the non-Federal entity's policy or respective review are considered pertinent to a Federal award and must be maintained and made available to DOE upon request, consistent with the retention requirements of 2 CFR 200.334. See section IV(i) of the Interim COI Policy.

13. Can an investigator be involved in the designated official(s)' determination of whether a significant financial interest is related to the DOE financial assistance award?

Response: Yes. A non-Federal entity must designate an official(s) to solicit and review disclosures of significant financial interests. The non-Federal entity's designated official(s) may involve the investigator to determine whether the significant financial interest is related to the DOE financial assistance award. See section IV(f) of the Interim COI Policy.

14. What actions should be taken in the event that an investigator fails to comply with the non-Federal entity's financial conflict of interest policy or management plan?

Response: When an investigator fails to comply with the non-Federal entity's financial conflict of interest policy or a management plan put in place to address a conflict, the non-Federal entity shall within 120 days:

- a. complete a retrospective review of the investigator's activities and the project funded under the DOE award to determine whether any project activities were biased in the purpose, design, conduct, or reporting of such project;

- b. document the retrospective review consistent with the Interim COI Policy; and

If bias is found, the non-Federal entity shall notify the DOE Grants Officer promptly and submit a mitigation report to the DOE that shall address the following:

- a. impact of the bias on the research project; and
- b. the non-Federal entity's plan of action or actions taken to eliminate or mitigate the effect of the bias.

15. What does “prior to the non-Federal entity's expenditure of any funds” mean as provided at section V(b) of the Interim COI Policy?

Response: After DOE issues a grant or cooperative agreement award, “prior to the non-Federal entity's expenditure of any funds” is the period of time before an expense is recorded in the official records of the non-Federal entity.

16. What are the penalties/fines for failure to comply with the Interim COI Policy?

Response: Failure to comply with the requirements of the Interim COI Policy may result in DOE taking any action identified in section VII (pg. 18) of the Interim COI Policy or any other action available under the terms of the financial assistance award or in applicable regulations. Any false, fictitious, or fraudulent information, or the omission of any material fact, on a disclosure, report, or other record required under the Interim COI Policy may be subject to criminal, civil, or administrative penalties for fraud, false statements, false claims or otherwise. Readers are encouraged to read section VII of the Interim COI Policy to understand the breadth of the penalties/remedies.

17. How would a non-Federal entity pay for expenses related to a retrospective review?

Response: The cost of implementing the Interim COI Policy, including the cost to conduct a retrospective review, is an allowable cost that may be eligible for reimbursement under a DOE financial assistance award. The costs associated with the Interim COI Policy should be included in a non-Federal Entity's indirect cost pool, if applicable.

18. Does section VI of the Interim COI Policy regarding organizational conflict of interest apply only to private institutions? Does it apply to institutions that do not have a parent, affiliate, or subsidiary organization?

Response: Section VI is applicable to all non-Federal entities that are subject to the Interim COI Policy. However, only certain non-Federal entities – those that have a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe -- must maintain written standards of conduct covering organizational conflicts of interest.

To further clarify, in carrying out procurement transactions for the acquisition of property or services required under the DOE-funded award, non-Federal entities must follow certain procurement standards, including standards related organizational conflicts of interest. See 2 CFR 200.318 and .319.

Section VI of the Interim COI Policy requires that non-Federal entities provide DOE notice of potential or actual organizational conflicts of interest and states what information must be included in the notice. This notice requirement is applicable to all non-Federal entities that are subject to Interim COI Policy regardless if an entity is required or not required to have written organizational conflict of interest policies. Although, it is recognized that organizational conflicts of interest are more likely to arise where a non-Federal entity has a parent, affiliate, or subsidiary organization.

19. Does the Interim COI Policy apply to subrecipients?

Response: Yes. A recipient non-Federal entity must flow down the requirements of the Interim COI Policy to any subrecipient non-Federal entities. See section IV(c) of the Interim COI Policy, as well as Question 39 below.

REPORTING REQUIREMENTS: TYPES OF INFORMATION

20. What information must the non-Federal entity obtain from investigators and when should it be collected?

Response: Investigators are required to disclose significant financial interests (and those of the investigator's spouse and dependent children):

- a. no later than at the time of application for the DOE financial assistance award;
- b. within thirty days of discovering or acquiring (e.g., through purchase, marriage, or inheritance) a new significant financial interest; and
- c. at least annually, in accordance with the specific time period prescribed by the non-Federal entity, during the period of award.

21. What "relatedness" determination(s) must be made under section IV(f)?

Response: Section IV(f) calls for a determination as to whether a significant financial interest "is related to a project funded by DOE." An investigator's significant financial interest is related to a project funded

by DOE when the Institution, through its designated official(s), reasonably determines that the significant financial interest could be affected by the project funded by DOE or is in an entity whose financial interest could be affected by the project. An example could be when a university professor also holds an equity interest in a small business that was spun out of the professor's lab to commercialize technology developed in the lab. If DOE funds the university to further develop the technology, the financial interest in the small business could be "related" since the small business would be in a position to commercialize that DOE-funded technology.

22. The definition of FCOI includes a "significant financial interest or financial relationship." What is the definition of "financial relationship"? How does this term intersect with "significant financial interest"?

Response: Including "financial relationship" was to provide clarity to individuals reviewing the Interim COI Policy that may be more familiar with that phrase than "financial interest." The two phrases are interchangeable.

23. What must be disclosed by an investigator who is employed by a university and has equity interest in a for-profit company?

Response: If an individual is an investigator for a university project that is supported by a DOE financial assistance award (i.e., the university is the recipient), the investigator must disclose the equity interest in the for-profit company to the university.

24. Is an investigator required to disclose all financial interests received from a foreign non-Federal entity of higher education or the government of another country, or an entity controlled by the government of another country?

Response: Yes.

25. Am I required to disclose interests in mutual funds or retirement accounts?

Response: Maybe. The Interim COI Policy does not require the disclosure of income from investment vehicles, such as mutual funds and retirement accounts as long as the investigator does not directly control the investment decisions made in these vehicles. Please refer to your non-Federal entity's financial conflict of interest policy for disclosure requirements for mutual funds since the non-Federal entity's policy may be more restrictive.

26. What about stock and stock options?

Response: Please refer to your non-Federal entity's financial conflict of interest policy. Stock option assets are to be reported by the time an application for funding is submitted, and then reported annually or as new stocks are obtained, in the same manner as all other assets. The documentation needed to determine the value of a stock option is defined by the non-Federal entity.

MANAGING COIs AND HOW TO REPORT

27. How can a non-Federal entity manage conflicting financial interests?

Response: Examples of conditions or restrictions that might be imposed to manage an investigator's financial conflict of interest include, but are not limited to:

- a. Public disclosure of financial conflicts of interest (e.g., when presenting or publishing the research; to staff members working on the project; etc.);
- b. Appointment of an independent monitor capable of taking measures to protect the design, conduct, and reporting of the research against bias resulting from the financial conflict of interest;
- c. Modification of the research plan;
- d. Change of personnel or personnel responsibilities, or disqualifications of personnel from participation in all or a portion of the research;
- e. Reduction or elimination of the financial interest (e.g., sale of an equity interest); or
- f. Severance of relationships that create financial conflicts

28. Must the non-Federal entity provide DOE with a copy of the investigator's signed management plan as confirmation of the investigator's agreement to the management plan?

Response: No, unless specifically required by the DOE Program Office that issued the funding opportunity announcement/applicable financial assistance award. However, a non-Federal entity's financial conflict of interest policy must require that an investigator agree to and sign any management plan prepared by the non-Federal entity to address the investigator's financial conflict of interest.

29. How should a FCOI report be submitted to DOE?

Response: The reporting process and requirements will be specified in the applicable funding opportunity announcement and/or the terms and conditions of the financial assistance award. This direction will include but is not limited to reporting of managed and unmanageable FCOIs and retrospective reviews.

30. If/how/when should the investigator disclosures (section IV(e)) be provided to DOE?

Response: For many DOE awards, the recipient is not required to routinely provide the individual investigator disclosures to DOE. However, as stated in section V(b)(5) of the Interim COI Policy, DOE “may require to routinely submit all or some of the investigator disclosures[.]” In the event, the individual disclosure forms must be submitted routinely, the submission process and requirements will be specified in the applicable funding opportunity announcement and/or the terms and conditions of the financial assistance award. Also, for all awards, the recipient must make investigator disclosures available to DOE promptly upon DOE’s request.

31. Will DOE provide a template disclosure form for investigators to use to disclose significant financial interests to their non-Federal entity?

Response: DOE is not mandating a specific disclosure form as part of the Interim COI Policy. Non-Federal entities may use their own disclosure forms and ensure their disclosure forms solicit the necessary information to comply with the Interim COI Policy. Keep in mind, every disclosure must be signed and dated by the investigator and include the following statement (see section IV(e)(4)):

I understand that this Disclosure is required to obtain funding from the U.S. Government. I, [Full Name and Title], certify to the best of my knowledge and belief that the information contained in this Disclosure Statement is true, complete, and accurate. I understand that any false, fictitious, or fraudulent information, misrepresentations, half-truths, or omissions of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims, or otherwise. (18 U.S.C. §§ 1001 and 287, and 31 U.S.C. 3729-3730 and 3801-3812). I further understand and agree that (1) the statements and representations made herein are material to U.S. Government’s funding decision, and (2) I have a responsibility to update the disclosures during the period of performance of the award should circumstances change which impact the responses provided above.

32. The Interim COI Policy includes attestation/certification language for investigators. Should this language be used verbatim, or can similar language be used?

Response: This language must be used verbatim.

33. How often must a non-Federal entity submit a FCOI report to DOE?

Response: The FCOI report must be submitted at least on an annual basis, and within 30 days of discovering or acquiring (e.g., through purchase, marriage, or inheritance) a new significant financial interest. Each DOE Program Office has discretion to require more frequent reporting. Check the reporting requirements in the terms and conditions of your financial assistance award to confirm the required frequency.

34. Is a non-Federal entity required to submit an FCOI report if the non-Federal entity eliminates the conflicting financial interest prior to the submission of the initial FCOI report?

Response: No. In cases in which the non-Federal entity identifies a financial conflict of interest and eliminates it prior to the expenditure of DOE-awarded funds, the non-Federal entity is not required to report that financial conflict of interest on a FCOI report.

35. Can DOE request more information from an applicant and/or recipient/subrecipient non-Federal entity about financial conflict of interest matters?

Response: Yes. DOE may inquire at any time before, during, or after award into any investigator disclosure of financial interests and the non-Federal entity's review (including any retrospective review) of, and response to, such disclosure, regardless of whether the disclosure resulted in the non-Federal entity's determination of a financial conflict of interest, including a requirement to submit, or permit on site review of, all records pertinent to compliance with the Interim COI Policy.

36. Must a non-Federal entity submit a new FCOI report when there are changes to an investigator's significant financial interests?

Response: Yes. The non-Federal entity must submit a new FCOI report if any of the following elements of a previously submitted FCOI report changes:

- a. Project Number
- b. Name of investigator with the FCOI
- c. Name of the entity
- d. Nature of the significant financial interest

If the value of a reported significant financial interest changes during the year, the investigator should disclose the change to the non-Federal entity in their annual disclosure, and those changes can be reflected in its next FCOI report.

37. Must a recipient/subrecipient non-Federal entity report that there are no FCOIs for an investigator if none of an investigator's significant financial interests are found to be FCOIs?

Response: No. There is no requirement to submit negative FCOI reports.

38. What should a non-Federal entity do if a FCOI report is submitted in error (e.g., a FCOI report submitted before completion, or one with an error in the award number, name of investigator with the conflict, or subrecipient name)?

Response: If a FCOI report is submitted in error, notify the Grants Officer overseeing the award of the error and follow instructions to submit a corrected FCOI report.

SUBRECIPIENTS AND TRAINING REQUIREMENTS

39. What are the responsibilities of the non-Federal entity for subrecipients?

Response: The recipient non-Federal entity is responsible for ensuring any subrecipient's compliance with the Interim COI Policy and all applicable reporting to DOE. Recipient non-Federal entities must include in each subaward terms that establish whether the financial conflict of interest policy of the recipient non-Federal entity or that of the subrecipient will apply to subrecipient investigators and include time periods to meet disclosure and/or financial conflict of interest reporting requirements.

Subrecipient non-Federal entities who rely on their financial conflict of interest policy must report applicable financial conflicts of interests to the recipient non-Federal entity in sufficient time to allow the recipient non-Federal entity to meet its reporting obligations to DOE.

Subrecipient non-Federal entities that must comply with the recipient non-Federal entity's policy must submit all investigator disclosures of significant financial interests to the recipient in sufficient time to allow the recipient to review, manage, and report applicable FCOIs to DOE.

Recipient non-Federal entities are responsible for monitoring subrecipient's compliance with the Interim COI Policy, management plans, and for reporting all applicable financial conflicts of interest to DOE. Specifically, as stated in section IV(d) of the Interim COI Policy, recipient non-Federal entities must:

Designate a non-Federal entity official(s) to solicit and review disclosures of significant financial interests from each [i]nvestigator who is planning to participate in, or is

participating in, the project funded under a DOE award, *including disclosures of subrecipient investigators* pursuant to paragraph (c) of this section.

(Emphasis added.)

40. Does the Interim COI Policy require investigator training?

Response: Yes. Non-federal entities must require investigators, including subrecipient investigators, to complete training prior to engaging in a project funded by a DOE financial assistance award, at least every four years thereafter, and “immediately” (as that term is defined in the non-Federal entity’s financial conflict of interest policy) under the designated circumstances:

- a. Non-Federal entity’s financial conflict of interest policies change in a manner that affects investigator requirements
- b. An investigator is new to a non-Federal entity
- c. A non-Federal entity finds that an investigator is not in compliance with the non-Federal entity’s financial conflict of interest policy or management plan.

The training must inform the investigators of the non-Federal entity’s policy on financial conflicts of interest, the investigator’s responsibilities regarding disclosure of significant financial interests, and of DOE’s Interim COI Policy.

Training on the DOE Interim COI Policy can be included in other training being conducted by the non-Federal entity, including, but not limited to, general conflict of interest training.