

114TH CONGRESS
2D SESSION

H. R. 5049

To provide for improved management and oversight of major multi-user research facilities funded by the National Science Foundation, to ensure transparency and accountability of construction and management costs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2016

Mr. LOUDERMILK (for himself and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on Science, Space, and Technology

A BILL

To provide for improved management and oversight of major multi-user research facilities funded by the National Science Foundation, to ensure transparency and accountability of construction and management costs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “NSF Major Research
5 Facility Reform Act of 2016”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) DIRECTOR.—The term “Director” means
2 the Director of the Foundation.

3 (2) FOUNDATION.—The term “Foundation”
4 means the National Science Foundation established
5 under section 2 of the National Science Foundation
6 Act of 1950 (42 U.S.C. 1861).

7 **SEC. 3. MANAGEMENT AND OVERSIGHT OF LARGE FACILI-**
8 **TIES.**

9 (a) LARGE FACILITIES OFFICE.—The Director shall
10 maintain a Large Facilities Office. The functions of the
11 Large Facilities Office shall be to support the research
12 directorates in the development, implementation, and as-
13 sessment of major multi-user research facilities, including
14 by—

15 (1) serving as the Foundation’s primary re-
16 source for all policy or process issues related to the
17 development and implementation of major multi-user
18 research facilities;

19 (2) serving as a Foundation-wide resource on
20 project management, including providing expert as-
21 sistance on nonscientific and nontechnical aspects of
22 project planning, budgeting, implementation, man-
23 agement, and oversight;

1 (3) coordinating and collaborating with research
2 directorates to share best management practices and
3 lessons learned from prior projects; and

4 (4) assessing projects during preconstruction
5 and construction phases for cost and schedule risk.

6 (b) OVERSIGHT OF LARGE FACILITIES.—The Direc-
7 tor shall appoint a senior agency official whose primary
8 responsibility is oversight of major multi-user research fa-
9 cilities. The duties of this official shall include—

10 (1) oversight of the development, construction,
11 and operation of major multi-user research facilities
12 across the Foundation;

13 (2) serving as a liaison to the National Science
14 Board for approval and oversight of major multi-
15 user research facilities; and

16 (3) periodically reviewing and updating as nec-
17 essary Foundation policies and guidelines for the de-
18 velopment and construction of major multi-user re-
19 search facilities.

20 (c) POLICIES FOR LARGE FACILITY COSTS.—

21 (1) IN GENERAL.—The Director shall ensure
22 that the Foundation’s polices for developing and
23 maintaining major multi-user research facility con-
24 struction costs are consistent with the best practices
25 described in the March 2009 Government Account-

1 ability Office Report GAO–09–3SP, or any successor
2 report thereto, and the Uniform Guidance in 2 CFR
3 part 200.

4 (2) COST PROPOSAL AUDITS.—

5 (A) GENERAL REQUIREMENT.—The Direc-
6 tor shall ensure that a cost proposal audit is
7 conducted on any project with a total project
8 cost over \$100,000,000, in accordance with
9 Government Auditing Standards as established
10 in Government Accountability Office Report
11 GAO–12–331G, or any successor report there-
12 to.

13 (B) RESOLUTION OF ISSUES FOUND.—The
14 Director, or a senior agency official within the
15 Office of the Director designated by the Direc-
16 tor, shall certify in writing that all issues identi-
17 fied by the auditor, including any finding of un-
18 justified or questionable costs items, are re-
19 solved before the Foundation may execute a
20 construction agreement with respect to the au-
21 dited project.

22 (C) TRANSMITTAL TO CONGRESS.—The
23 Director shall transmit each certification made
24 under subparagraph (B) to the Committee on
25 Science, Space, and Technology of the House of

1 Representatives, the Committee on Commerce,
2 Science, and Transportation of the Senate, the
3 Committee on Appropriations of the House of
4 Representatives, and the Committee on Appro-
5 priations of the Senate.

6 (3) INCURRED COST AUDITS.—The Director
7 shall ensure that an incurred cost audit is conducted
8 at least biennially on any project with a total project
9 cost over \$100,000,000, in accordance with Govern-
10 ment Auditing Standards as established in Govern-
11 ment Accountability Office Report GAO–12–331G,
12 or any successor report thereto, with the first in-
13 curred cost audit to commence no later than 12
14 months after execution of the construction agree-
15 ment.

16 (4) CONTINGENCIES.—

17 (A) IN GENERAL.—Except as provided for
18 in subparagraph (C)(ii), the Foundation shall—

19 (i) manage contingency in accordance
20 with Cost Principles Uniform Guidance in
21 2 CFR part 200.433, or any successor
22 thereto, except as provided in this para-
23 graph; and

1 (ii) not make any award which pro-
2 vides for contributions to a contingency re-
3 serve held or managed by the awardee.

4 (B) UPDATING POLICY MANUAL.—The
5 Foundation shall update its NSF Grant Policy
6 Manual and any other applicable guidance for
7 contingencies on major multi-user research fa-
8 cilities with regard to estimating, monitoring,
9 and accounting for contingency expenditures.

10 (C) FOUNDATION REQUIREMENTS.—The
11 policy updated under subparagraph (B) shall
12 require that the Foundation—

13 (i) may only include contingency
14 amounts in an award in accordance with
15 Cost Principles Uniform Guidance in 2
16 CFR part 200.433, or any successor there-
17 to; and

18 (ii) shall retain control over funds
19 budgeted for contingency reserve, but may
20 disburse budgeted contingency funds incre-
21 mentally to the awardee to ensure project
22 stability and continuity.

23 (D) AWARDEE REQUIREMENTS.—The pol-
24 icy updated under subparagraph (B) shall re-
25 quire that an awardee shall—

1 (i) provide verifiable cost data for any
2 amounts proposed for contingencies;

3 (ii) support requests for the release of
4 contingency funds with evidence of a bona
5 fide need and verifiable cost data to estab-
6 lish that the amounts sought are reason-
7 able, allocable, and allowable; and

8 (iii) record and report all contingency
9 expenditures to the Foundation.

10 (E) CURRENT AWARDEES.—The Founda-
11 tion shall work with awardees for whom awards
12 with contingency provisions have been made be-
13 fore the date of enactment of this Act—

14 (i) to determine if any of their use of
15 contingency funds represents out-of-scope
16 changes for which Foundation’s prior writ-
17 ten approval was not obtained; and

18 (ii) if out-of-scope changes are found,
19 to identify any financial action that may be
20 appropriate.

21 (5) MANAGEMENT FEES.—

22 (A) DEFINITION.—In this paragraph, the
23 term “management fee” means a portion of an
24 award made by the Foundation for the purpose
25 of covering ordinary and legitimate business ex-

1 penses necessary to maintain operational sta-
2 bility which are not otherwise allowable under
3 Cost Principles Uniform Guidance in 2 CFR
4 part 200, Subpart E, or any successor regula-
5 tion thereto.

6 (B) LIMITATION.—The Foundation may
7 provide management fees under an award only
8 if the awardee has demonstrated that it has
9 limited or no other financial resources available
10 for covering the expenses for which the manage-
11 ment fees are sought.

12 (C) FINANCIAL INFORMATION.—The
13 Foundation shall require award applicants to
14 provide income and financial information cov-
15 ering a period of no less than 3 prior years (or
16 in the case of an entity established less than 3
17 years prior to the entity’s application date, the
18 period beginning on the date of establishment
19 and ending on the application date), including
20 cash on hand and net asset information, in sup-
21 port of a request for management fees. The
22 Foundation shall also require awardees to re-
23 port to the Foundation annually any sources of
24 non-Federal funds received in excess of \$50,000
25 during the award period.

1 (D) EXPENSE REPORTING.—The Founda-
2 tion shall require awardees to track and report
3 to the Foundation annually all expenses reim-
4 bursed or otherwise paid for with management
5 fee funds, in accordance with Federal account-
6 ing practices as established in Government Ac-
7 countability Office Report GAO–12–331G, or
8 any successor report thereto.

9 (E) AUDITS.—The Inspector General of
10 the Foundation may audit any Foundation
11 award for compliance with this paragraph.

12 (F) PROHIBITED USES.—An awardee may
13 not use management fees for—

14 (i) costs allowable under Cost Prin-
15 ciples Uniform Guidance in 2 CFR part
16 200, Subpart E, or any successor regula-
17 tion thereto;

18 (ii) alcoholic beverages;

19 (iii) tickets to concerts, sporting, or
20 other entertainment events;

21 (iv) vacation or other travel for non-
22 business purposes;

23 (v) charitable contributions, except for
24 a charitable contribution of direct benefit

1 to the project or activity supported by the
2 management fee;

3 (vi) social or sporting club member-
4 ships;

5 (vii) meals or entertainment for non-
6 business purposes;

7 (viii) luxury or personal items;

8 (ix) lobbying, as described in the Uni-
9 form Guidance at 2 CFR 200.450; or

10 (x) any other purpose the Foundation
11 determines is inappropriate.

12 (G) REVIEW.—The Foundation shall re-
13 view management fee usage for each Founda-
14 tion award on at least an annual basis for com-
15 pliance with this paragraph and the Founda-
16 tion’s Large Facilities Manual.

17 (6) REPORT.—Not later than 12 months after
18 the date of enactment of this Act, the Director shall
19 submit to Congress a report describing the Founda-
20 tion’s policies for developing and managing major
21 multi-user research facility construction costs, in-
22 cluding a description of any aspects of the policies
23 that diverge from the best practices recommended in
24 Government Accountability Office Report GAO–09–

1 3SP, or any successor report thereto, and the Uni-
2 form Guidance in 2 CFR part 200.

3 **SEC. 4. WHISTLEBLOWER EDUCATION.**

4 (a) IN GENERAL.—The Foundation shall be subject
5 to section 4712 of title 41, United States Code.

6 (b) EDUCATION AND TRAINING.—The Foundation
7 shall provide education and training for Foundation man-
8 agers and staff on the requirements of such section 4712,
9 and provide information on such section to all awardees,
10 contractors, and employees of such awardees and contrac-
11 tors.

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