

Union Calendar No. 481

114TH CONGRESS
2^D SESSION

H. R. 5049

[Report No. 114-619]

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

JUNE 13, 2016

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on April 26, 2016]

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:*

8 (1) *DIRECTOR.*—*The term “Director” means the*
9 *Director of the Foundation.*

10 (2) *FOUNDATION.*—*The term “Foundation”*
11 *means the National Science Foundation established*
12 *under section 2 of the National Science Foundation*
13 *Act of 1950 (42 U.S.C. 1861).*

14 (3) *MAJOR MULTI-USER RESEARCH FACILITY.*—
15 *The term “major multi-user research facility” means*
16 *a science and engineering infrastructure construction*
17 *project that exceeds the lesser of 10 percent of a Direc-*
18 *torate’s annual budget or \$100,000,000 in total*
19 *project cost that is funded in the major research*
20 *equipment and facilities construction account, or any*
21 *successor thereto.*

22 **SEC. 3. MANAGEMENT AND OVERSIGHT OF LARGE FACILI-**
23 **TIES.**

24 (a) *LARGE FACILITIES OFFICE.*—*The Director shall*
25 *maintain a Large Facilities Office. The functions of the*

1 *Large Facilities Office shall be to support the research di-*
2 *rectorates in the development, implementation, and assess-*
3 *ment of major multi-user research facilities, including by—*

4 (1) *serving as the Foundation’s primary resource*
5 *for all policy or process issues related to the develop-*
6 *ment and implementation of major multi-user re-*
7 *search facilities;*

8 (2) *serving as a Foundation-wide resource on*
9 *project management, including providing expert as-*
10 *sistance on nonscientific and nontechnical aspects of*
11 *project planning, budgeting, implementation, man-*
12 *agement, and oversight;*

13 (3) *coordinating and collaborating with research*
14 *directorates to share best management practices and*
15 *lessons learned from prior projects; and*

16 (4) *assessing projects during preconstruction and*
17 *construction phases for cost and schedule risk.*

18 (b) *OVERSIGHT OF LARGE FACILITIES.—The Director*
19 *shall appoint a senior agency official as head of the Large*
20 *Facilities Office whose responsibility is oversight of the de-*
21 *velopment, construction, and transfer to operations of major*
22 *multi-user research facilities across the Foundation.*

23 (c) *POLICIES FOR LARGE FACILITY COSTS.—*

24 (1) *IN GENERAL.—The Director shall ensure that*
25 *the Foundation’s polices for developing and main-*

1 *taining major multi-user research facility construc-*
2 *tion costs are consistent with the best practices de-*
3 *scribed in the March 2009 Government Accountability*
4 *Office Report GAO-09-3SP, or any successor report*
5 *thereto, the Uniform Guidance in 2 C.F.R. part 200,*
6 *and the Federal Acquisition Regulation as appro-*
7 *priate.*

8 (2) *COST PROPOSAL ANALYSIS.—*

9 (A) *GENERAL REQUIREMENT.—The Direc-*
10 *tor shall ensure that an external cost proposal*
11 *analysis is conducted for any major multi-user*
12 *research facility.*

13 (B) *RESOLUTION OF ISSUES FOUND.—The*
14 *Director, or a senior agency official within the*
15 *Office of the Director designated by the Director,*
16 *shall certify in writing that all issues identified*
17 *during the cost analysis, including any findings*
18 *of unjustified or questionable cost items, are re-*
19 *solved before the Foundation may execute a con-*
20 *struction agreement with respect to the project.*

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

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

5 (3) *INCURRED COST AUDITS.*—*The Director shall*
6 *ensure that an incurred cost audit is conducted at*
7 *least biennially on any major multi-user research fa-*
8 *cility, in accordance with Government Auditing*
9 *Standards as established in Government Account-*
10 *ability Office Report GAO-12-331G, or any successor*
11 *report thereto, with the first incurred cost audit to*
12 *commence no later than 12 months after execution of*
13 *the construction agreement.*

14 (4) *CONTINGENCIES.*—

15 (A) *IN GENERAL.*—*Except as provided for*
16 *in subparagraph (C)(ii), the Foundation shall—*

17 (i) *provide oversight for contingency in*
18 *accordance with Cost Principles Uniform*
19 *Guidance in 2 C.F.R. part 200.433, or any*
20 *successor thereto, and the Federal Acquisi-*
21 *tion Regulation as appropriate, except as*
22 *provided in this paragraph; and*

23 (ii) *not make any award which pro-*
24 *vides for contributions to a contingency re-*

1 *serve held or managed by the awardee, as*
2 *defined in 2 C.F.R. part 200.433(c).*

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

9 *(C) FOUNDATION REQUIREMENTS.—The*
10 *policy updated under subparagraph (B) shall re-*
11 *quire that the Foundation—*

12 *(i) may only include contingency*
13 *amounts in an award in accordance with*
14 *Cost Principles Uniform Guidance in 2*
15 *C.F.R. part 200.433, or any successor there-*
16 *to, and the Federal Acquisition Regulation*
17 *as appropriate; and*

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

23 *(D) AWARDEE REQUIREMENTS.—The policy*
24 *updated under subparagraph (B) shall require*
25 *that an awardee shall—*

1 (i) provide verifiable documentation to
2 support any amounts proposed for contin-
3 gencies; and

4 (ii) support requests for the release of
5 contingency funds with evidence of a bona
6 fide need and that the amounts allocated to
7 the performance baseline are reasonable and
8 allowable.

9 (E) *CURRENT AWARDEES.*—*The Foundation*
10 *shall work with awardees for whom awards with*
11 *contingency provisions have been made before the*
12 *date of enactment of this Act—*

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

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

20 (5) *MANAGEMENT FEES.*—

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

1 **bility which are not otherwise allowable under**
2 **Cost Principles Uniform Guidance in 2 C.F.R.**
3 **part 200, Subpart E, or any successor regulation**
4 **thereto.**

5 **(B) LIMITATION.—The Foundation may**
6 **provide a management fee under an award only**
7 **if the awardee provides justification as to the**
8 **need for such funds. In such cases, the Founda-**
9 **tion shall take into account the awardee’s overall**
10 **financial circumstances when determining the**
11 **amount of the fee if justified.**

12 **(C) FINANCIAL INFORMATION.—The Foun-**
13 **dation shall require award applicants to provide**
14 **income and financial information covering a pe-**
15 **riod of no less than 3 prior years (or in the case**
16 **of an entity established less than 3 years prior**
17 **to the entity’s application date, the period begin-**
18 **ning on the date of establishment and ending on**
19 **the application date), including cash on hand**
20 **and net asset information, in support of a re-**
21 **quest for management fees. The Foundation shall**
22 **also require awardees to report to the Founda-**
23 **tion annually any sources of non-Federal funds**
24 **received in excess of \$50,000 during the award**
25 **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 accounting*
6 *practices as established in Government Account-*
7 *ability Office Report GAO–12–331G, or any suc-*
8 *cessor report thereto.*

9 (E) *AUDITS.*—*The Inspector General of the*
10 *Foundation may audit any Foundation award*
11 *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 C.F.R. part*
16 *200, Subpart E, or any successor regulation*
17 *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 to*

1 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 C.F.R. 200.450; or

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

12 (G) *REVIEW.*—The Foundation shall review
13 management fee usage for each Foundation
14 award on at least an annual basis for compli-
15 ance with this paragraph and the Foundation’s
16 Large Facilities Manual.

17 (6) *REPORT.*—Not later than 12 months after the
18 date of enactment of this Act, the Director shall sub-
19 mit to Congress a report describing the Foundation’s
20 policies for developing and managing major multi-
21 user research facility construction costs, including a
22 description of any aspects of the policies that diverge
23 from the best practices recommended in Government
24 Accountability Office Report GAO-09-3SP, or any

1 *successor report thereto, and the Uniform Guidance in*
2 *2 C.F.R. part 200.*

3 (7) *NONCOMPLIANCE.—The Director shall ensure*
4 *that the Foundation shall take the enforcement ac-*
5 *tions specified in 45 C.F.R. 92.43 for noncompliance*
6 *with this section.*

7 **SEC. 4. WHISTLEBLOWER EDUCATION.**

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

10 (b) *EDUCATION AND TRAINING.—The Foundation shall*
11 *provide education and training for Foundation managers*
12 *and staff on the requirements of such section 4712, and pro-*
13 *vide information on such section to all awardees, contrac-*
14 *tors, and employees of such awardees and contractors.*

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