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 italic]

[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.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. DEFINITIONS.

In this Act:

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

(2) FOUNDATION.—The term “Foundation”
means the National Science Foundation established
under section 2 of the National Science Foundation

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

SEC. 3. MANAGEMENT AND OVERSIGHT OF LARGE FACILI-
ties.

(a) LARGE FACILITIES OFFICE.—The Director shall
maintain a Large Facilities Office. The functions of the
Large Facilities Office shall be to support the research directorates in the development, implementation, and assessment of major multi-user research facilities, including by—

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

(2) serving as a Foundation-wide resource on project management, including providing expert assistance on nonscientific and nontechnical aspects of project planning, budgeting, implementation, management, and oversight;

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

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

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

(c) POLICIES FOR LARGE FACILITY COSTS.—

(1) IN GENERAL.—The Director shall ensure that the Foundation’s policies for developing and main-
taining major multi-user research facility construc-
tion costs are consistent with the best practices de-
scribed in the March 2009 Government Accountability
Office Report GAO-09-3SP, or any successor report
thereto, the Uniform Guidance in 2 C.F.R. part 200,
and the Federal Acquisition Regulation as appro-
priate.

(2) Cost Proposal Analysis.—

(A) General Requirement.—The Direc-
tor shall ensure that an external cost proposal
analysis is conducted for any major multi-user
research facility.

(B) Resolution of Issues Found.—The
Director, or a senior agency official within the
Office of the Director designated by the Director,
shall certify in writing that all issues identified
during the cost analysis, including any findings
of unjustified or questionable cost items, are re-
solved before the Foundation may execute a con-
struction agreement with respect to the project.

(C) Transmittal to Congress.—The Di-
rector shall transmit each certification made
under subparagraph (B) to the Committee on
Science, Space, and Technology of the House of
Representatives, the Committee on Commerce,
Science, and Transportation of the Senate, the Committee on Appropriations of the House of Representatives, and the Committee on Appropriations of the Senate.

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

(4) CONTINGENCIES.—

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

(i) provide oversight for contingency in accordance with Cost Principles Uniform Guidance in 2 C.F.R. part 200.433, or any successor thereto, and the Federal Acquisition Regulation as appropriate, except as provided in this paragraph; and

(ii) not make any award which provides for contributions to a contingency re-
serve held or managed by the awardee, as defined in 2 C.F.R. part 200.433(c).

(B) Updating Policy Manual.—The Foundation shall update its Large Facilities Manual and any other applicable guidance for contingencies on major multi-user research facilities with regard to estimating, monitoring, and accounting for contingency.

(C) Foundation Requirements.—The policy updated under subparagraph (B) shall require that the Foundation—

(i) may only include contingency amounts in an award in accordance with Cost Principles Uniform Guidance in 2 C.F.R. part 200.433, or any successor thereto, and the Federal Acquisition Regulation as appropriate; and

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

(D) Awardee Requirements.—The policy updated under subparagraph (B) shall require that an awardee shall—
(i) provide verifiable documentation to support any amounts proposed for contingencies; and

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

(E) CURRENT AwarDEEs.—The Foundation shall work with awardees for whom awards with contingency provisions have been made before the date of enactment of this Act—

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

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

(5) MANAGEMENT FEES.—

(A) DEFINITION.—In this paragraph, the term “management fee” means a portion of an award made by the Foundation for the purpose of covering ordinary and legitimate business expenses necessary to maintain operational sta-
bility which are not otherwise allowable under Cost Principles Uniform Guidance in 2 C.F.R. part 200, Subpart E, or any successor regulation thereto.

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

(C) FINANCIAL INFORMATION.—The Foundation shall require award applicants to provide income and financial information covering a period of no less than 3 prior years (or in the case of an entity established less than 3 years prior to the entity’s application date, the period beginning on the date of establishment and ending on the application date), including cash on hand and net asset information, in support of a request for management fees. The Foundation shall also require awardees to report to the Foundation annually any sources of non-Federal funds received in excess of $50,000 during the award period.
(D) EXPENSE REPORTING.—The Foundation shall require awardees to track and report to the Foundation annually all expenses reimbursed or otherwise paid for with management fee funds, in accordance with Federal accounting practices as established in Government Accountability Office Report GAO–12–331G, or any successor report thereto.

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

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

(i) costs allowable under Cost Principles Uniform Guidance in 2 C.F.R. part 200, Subpart E, or any successor regulation thereto;

(ii) alcoholic beverages;

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

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

(v) charitable contributions, except for a charitable contribution of direct benefit to
the project or activity supported by the management fee;

(vi) social or sporting club memberships;

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

(viii) luxury or personal items;

(ix) lobbying, as described in the Uniform Guidance at 2 C.F.R. 200.450; or

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

(G) REVIEW.—The Foundation shall review management fee usage for each Foundation award on at least an annual basis for compliance with this paragraph and the Foundation’s Large Facilities Manual.

(6) REPORT.—Not later than 12 months after the date of enactment of this Act, the Director shall submit to Congress a report describing the Foundation’s policies for developing and managing major multi-user research facility construction costs, including a description of any aspects of the policies that diverge from the best practices recommended in Government Accountability Office Report GAO-09-38P, or any
successor report thereto, and the Uniform Guidance in
2 C.F.R. part 200.

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

SEC. 4. WHISTLEBLOWER EDUCATION.

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

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

[Report No. 114-619]

H. R. 5049

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