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(Original Signature of Member)

114TH CONGRESS  
2D SESSION

# H. R.

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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.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. LOUDERMILK introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# 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”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

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

9 **SEC. 3. MANAGEMENT AND OVERSIGHT OF LARGE FACILI-**  
10 **TIES.**

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

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

21 (2) serving as a Foundation-wide resource on  
22 project management, including providing expert as-  
23 sistance on nonscientific and nontechnical aspects of  
24 project planning, budgeting, implementation, man-  
25 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  
3 C.F.R. 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 thereto.

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

21 (C) TRANSMITTAL TO CONGRESS.—The  
22 Director 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 Approp-  
4 riations of the Senate.

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

14 (4) CONTINGENCIES.—

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

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

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

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

7 (C) FOUNDATION REQUIREMENTS.—The  
8 policy updated under subparagraph (B) shall  
9 require that the Foundation—

10 (i) may only include contingency  
11 amounts in an award in accordance with  
12 Cost Principles Uniform Guidance in 2  
13 C.F.R. part 200.433, or any successor  
14 thereto; and

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

20 (D) AWARDEE REQUIREMENTS.—The pol-  
21 icy updated under subparagraph (B) shall re-  
22 quire that an awardee shall—

23 (i) provide verifiable cost data for any  
24 amounts proposed for contingencies;

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

6 (iii) record and report all contingency  
7 expenditures to the Foundation.

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

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

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

19 (5) MANAGEMENT FEES.—

20 (A) DEFINITION.—In this paragraph, the  
21 term “management fee” means a portion of an  
22 award made by the Foundation for the purpose  
23 of covering ordinary and legitimate business ex-  
24 penses necessary to maintain operational sta-  
25 bility which are not otherwise allowable under

1 Cost Principles Uniform Guidance in 2 C.F.R.  
2 part 200, Subpart E, or any successor regula-  
3 tion thereto.

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

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

24 (D) EXPENSE REPORTING.—The Founda-  
25 tion shall require awardees to track and report



1 to the Foundation annually all expenses reim-  
2 bursed or otherwise paid for with management  
3 fee funds, in accordance with Federal account-  
4 ing practices as established in Government Ac-  
5 countability Office Report GAO-12-331G, or  
6 any successor report thereto.

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

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

12 (i) costs allowable under Cost Prin-  
13 ciples Uniform Guidance in 2 C.F.R. part  
14 200, Subpart E, or any successor regula-  
15 tion thereto;

16 (ii) alcoholic beverages;

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

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

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

1 (vi) social or sporting club member-  
2 ships;

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

5 (viii) luxury or personal items;

6 (ix) lobbying, as described in the Uni-  
7 form Guidance at 2 C.F.R. 200.450; or

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

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

15 (6) REPORT.—Not later than 12 months after  
16 the date of enactment of this Act, the Director shall  
17 submit to Congress a report describing the Founda-  
18 tion's policies for developing and managing major  
19 multi-user research facility construction costs, in-  
20 cluding a description of any aspects of the policies  
21 that diverge from the best practices recommended in  
22 Government Accountability Office Report GAO-09-  
23 3SP, or any successor report thereto, and the Uni-  
24 form Guidance in 2 C.F.R. part 200.

1 **SEC. 4. WHISTLEBLOWER EDUCATION.**

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

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