

NSF MAJOR RESEARCH FACILITY REFORM ACT OF 2016

JUNE 13, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on Science, Space, and Technology, submitted the following

R E P O R T

[To accompany H.R. 5049]

[Including cost estimate of the Congressional Budget Office]

The Committee on Science, Space, and Technology, to whom was referred the bill (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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Committee Statement and Views .....	4
Section-by-Section .....	8
Explanation of Amendments .....	10
Committee Consideration .....	10
Application of Law to the Legislative Branch .....	10
Statement of Oversight Findings and Recommendations of the Committee .....	10
Statement of General Performance Goals and Objectives .....	10
Duplication of Federal Programs .....	10
Disclosure of Directed Rule Makings .....	11
Federal Advisory Committee Act .....	11
Unfunded Mandate Statement .....	11
Earmark Identification .....	11
Committee Estimate .....	11
Budget Authority and Congressional Budget Office Cost Estimate .....	11

The amendment is as follows:

Strike all after the enacting clause and insert the following:

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 Act of 1950 (42 U.S.C. 1861).
- (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 Directorate’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 FACILITIES.**

(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 maintaining major multi-user research facility construction costs are consistent with the best practices described 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 appropriate.

(2) **COST PROPOSAL ANALYSIS.**—

(A) **GENERAL REQUIREMENT.**—The Director 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 resolved before the Foundation may execute a construction agreement with respect to the project.

(C) **TRANSMITTAL TO CONGRESS.**—The Director 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 reserve 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 stability 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 nonbusiness 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 nonbusiness 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-09-3SP, 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 actions 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 provide information on such section to all awardees, contractors, and employees of such awardees and contractors.

### COMMITTEE STATEMENT AND VIEWS

#### PURPOSE AND SUMMARY

H.R. 5049, the *NSF Major Research Facility Reform Act of 2016*, is sponsored by Representative Barry Loudermilk, Chairman of the Oversight Subcommittee of the House Science, Space, and Technology Committee. The purpose of the bill is 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.

#### BACKGROUND AND NEED FOR LEGISLATION

The National Science Foundation (NSF) is an independent federal agency established in 1950 “to promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense; and for other purposes.” In support of that mission, the NSF periodically funds the development and construction of large-scale, multi-user scientific facilities through awards made under “cooperative agreements.” Cooperative agreements are a form of financial assistance for projects that require substantial involvement of the awarding agency, beyond routine monitoring or technical assistance. These 5–10 year construction projects often range from \$300 million to \$500 million in total project cost. NSF provides funding for the development, construction and operation of these facilities through the Major Research Equipment and Facilities Construction (MREFC) account. MREFC projects are both technically demanding and high cost, and have presented management challenges for NSF.

In 2014, the NSF Inspector General initiated audits of one MREFC project, the National Ecological Observatory Network (NEON) project, due to concerns identified with NSF's previous lack of assessment of several high-risk projects prior to entering into cooperative agreements and its failure to review on a regular

basis the awardees submitted costs. The audits found that of the proposed \$433.72 million NEON project cost, approximately \$102 million was “questionable” and an additional \$52 million was “unsupportable.”

In May 2015, the NSF and National Science Board (NSB) commissioned the National Academy of Public Administration (NAPA) to conduct a study reviewing the NSF’s use of cooperative agreements to support the development, construction and operation of large-scale research facilities. The NSF and NSB commissioned the study in response to concerns raised by Congress, the NSF IG and other stakeholders. On December 17, 2015, NAPA released its final report which found that while cooperative agreements are an appropriate mechanism for NSF to support large-scale research facilities, several reforms would strengthen the oversight of these projects. The report made 13 recommendations.

H.R. 5049 addresses gaps in project oversight and management through solutions identified by the NSF Inspector General, auditors, the NAPA study, and the Science Committee’s own oversight.

#### LEGISLATIVE HISTORY

During the 113th and 114th Congresses, the House Committee on Science, Space, and Technology held six hearings relevant to H.R. 5049.

On December 3, 2014, the full Committee held a hearing entitled, “Results of Two Audits of the National Ecological Observatory Network.” Witnesses included the Honorable Allison Lerner, Inspector General, National Science Foundation, and the Honorable Anita Bales, Director, Defense Contract Audit Agency.

On February 3, 2015, the Subcommittees on Oversight, and Research and Technology held a joint hearing entitled, “NSF’s Oversight of the NEON Project and Other Major Research Facilities Developed Under Cooperative Agreements.” Witnesses included Dr. Richard Buckius, Chief Operating Officer, National Science Foundation; Dr. James P. Collins, Chairman of the Board, the National Ecological Observatory Network Inc.; and Ms. Kate Manuel, Legislative Attorney for the Congressional Research Service.

On February 26, 2015, the Subcommittee on Research and Technology held a hearing entitled, “An Overview of the Fiscal Year 2016 Budget Proposal for the National Science Foundation and National Institute of Standards and Technology.” Witnesses included the Honorable France Córdova, Director of the National Science Foundation; and Dr. Dan Arvizu, Chairman, National Science Board.

On May 20, 2015, the House of Representatives passed H.R. 1806, the America COMPETES Reauthorization Act of 2015 by a vote of 217–205, which included some provisions of H.R. 5049 in sections 108 and 109.

On September 18, 2015, the Subcommittees on Oversight and Research and Technology held a joint hearing entitled, “NEON Warning Signs: Examining the Management of the National Ecological Observatory Network.” Witnesses included Dr. James L. Olds, Assistant Director for the Directorate for Biological Sciences, National Science Foundation; and Dr. James P. Collins, Chairman of the Board, National Ecological Observatory Network, Inc.

On February 4, 2016, the Subcommittees on Oversight, and Research and Technology held a joint hearing entitled, “A Review of Recommendations for NSF Project Management Reform.” Witnesses included Ms. Cynthia Heckmann, Project Director, National Academy of Public Administration; Dr. Richard Buckius, Chief Operating Officer, National Science Foundation; and, the Honorable Allison Lerner, Inspector General, National Science Foundation.

On March 22, 2016, the Subcommittee on Research and Technology held a hearing entitled, “An Overview of the Budget Proposal for the National Science Foundation for Fiscal Year 2017.” Witnesses included the Honorable France Córdova, Director, National Science Foundation; and Dr. Dan E. Arvizu, Chairman, National Science Board.

On April 26, 2016, H.R. 5049 was introduced by Representative Barry Loudermilk with Representative Lamar Smith.

On April 27, 2016, the House Science, Space and Technology Committee ordered reported H.R. 5049 by voice vote.

#### COMMITTEE VIEWS

##### *Large Facilities Office*

The Committee considers the NSF Large Facilities Office (LFO) to be an important partner for the NSF research directorates in the development, assessment, and implementation, of major multi-user research facility construction and transfer to operations. The Committee agrees with recommendations made by the National Academy of Public Administration that the NSF should develop project management training and education for LFO and program staff and facilitate project management knowledge sharing across the agency and with award recipients.

##### *Cost proposal analysis*

It is the Committee’s view that in addition to internal cost proposal reviews carried out by NSF, a review by an independent, external entity with proven, relevant expertise will provide a higher level of assurance that a proposed major multi-user research facility is constructed at the lowest cost necessary to taxpayers. The Committee believes that an external total project cost analysis will protect taxpayers, the NSF, the scientific research community, and NSF’s cooperative agreement partners against significant project delays and cost overruns. The Committee also believes that this step will more than pay for itself by identifying budget issues before they become problematic.

##### *Incurred cost audits*

The Committee intends for NSF to ensure that incurred cost audits are conducted on at least a biennial basis for the construction of major multi-user research facilities, beginning one-year after commencement of construction. The Committee does not intend this requirement to extend to the operations phase of major multi-user research facilities, but encourages NSF to consider periodic risk-based audits over the course of funding the management of large-scale research projects and facilities. The Committee understands that some awardees may have incurred cost submission and audit systems in place under FAR 42 or 2 CFR 200, and intends

for NSF to leverage existing incurred cost audits with the governing audit agency to satisfy the requirements of this provision, and minimize post-award administrative burdens and costs while ensuring accountability.

The Committee believes that incurred cost auditing is an established, effective tool for controlling costs and revealing developing issues during construction of large facilities that will protect taxpayers, the NSF, the affected scientific research community, and NSF's cooperative agreement partners against significant project delays and cost overruns during construction of NSF major multi-user research facilities. The results of periodic incurred cost audits can provide early indications of problems that, if undetected and unresolved, could turn into more serious ones that could force a project to be scaled back or cancelled due to cost overruns.

#### *Contingency*

The Committee believes that it is important during construction of major multi-user research facilities that NSF should control the construction contingency budget. However, the Committee understands the importance of not needlessly delaying the release of contingency funds during construction to assure continuity and stability, and encourages NSF to develop a system or formula for the approval and release of contingency funds in a timely manner, based on proper supporting documentation. The Committee strongly believes that advancing the entire construction contingency to the cooperative agreement partner upon execution of the construction agreement should not be NSF policy.

#### *Management fees*

The Committee understands that NSF awardees may incur necessary and ordinary business expenses during the construction and management of large facilities and projects that could not be otherwise reimbursed as either a direct or indirect cost and that in some cases a management fee or other payment mechanism may be necessary to ensure that these business expenses can be covered. However, the Committee believes it is inappropriate to treat a management fee as a payment to a non-profit awardee for its discretionary use, which provides a loophole for federal funds to be abused by awardees for inappropriate expenses like alcohol, lobbying, and lavish holiday parties. The Committee recognizes that the NSF recently instituted new policies for management fees with prohibitions on certain expenses and the Committee believes the bill largely mirrors that policy.

The Committee has included an additional prohibition not in current NSF policy: charitable contributions, except for a charitable contribution of direct benefit to the project or activity supported by the management fee. The Committee understands that an awardee may face circumstances in which a charitable contribution is a necessary and ordinary business expense. In most cases, the Committee considers charitable contributions supporting STEM education and training activities acceptable to meeting the exemption clause for this prohibition.

The Committee believes that the overall financial situation of an organization is an important factor in NSF's determination if a management fee is necessary and for what amount. The Committee

also recognizes that some awardee financial information may be considered proprietary or sensitive and urges NSF, when carrying out the financial information requirements of this section, to utilize existing financial reporting or other mechanisms to minimize regulatory burden and protect sensitive information.

The Committee strongly urges NSF to consider appropriate alternatives to management fees as recommended by NAPA and other fee mechanisms used by other federal science agencies.

#### *Whistleblower*

The Committee urges the education and training of NSF managers and staff on Section 4712 in the U.S. Code, the Pilot Program for Enhancement of Contractor Employee Whistleblower Protections. The Committee is extremely appreciative of the contributions made by a whistleblower, J. Kirk McGill, an auditor with the Defense Contract Audit Agency, who brought many of the issues with NSF's management of NEON Inc. to the attention of Congress.

### SECTION-BY-SECTION

#### *Sec. 1. Short title*

This section establishes the short title of the bill as the “NSF Major Research Facility Reform Act of 2016.”

#### *Sec. 2. Definitions*

This section defines Director, Foundation and Major Multi-User Research Facility.

#### *Sec. 3. Management and oversight of Large Facilities*

This section requires the NSF Director to maintain a Large Facilities Office serving as the Foundation's resource for all policy or process issues related to the development, assessment, and implementation of major multi-user research facilities.

Directs the NSF Director to appoint a senior agency official to be responsible for the Large Facilities Office.

Directs the NSF Director to ensure that the Foundation's policies for developing and maintaining major multi-user research facility costs are consistent with the best practices described in the March 2009 Government Accountability Office report GAO-09-3SP, or any succeeding report, the Uniform Guidance in 2 C.F.R. part 200, and the Federal Acquisition Regulation as appropriate.

Requires NSF to ensure an external total project cost proposal analysis is conducted for any major multi-user research facility and certify in writing that all issues identified during the cost analysis are resolved before the Foundation may execute a construction agreement with respect to the audited project.

Requires 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.

Requires the Foundation to: Manage contingencies 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 not make any award that provides for contributions to a contingency reserve held or managed by the awardee.

Directs the Foundation to update its manual and any other applicable guidance for contingencies on major multi-user research facilities with regard to estimating, monitoring, and accounting for contingency expenditures that may only include amounts in an award in accordance with C.F.R. part 200.433 or any succeeding report, and the Federal Acquisition Regulation, as appropriate; and that the Foundation shall retain control over budgeted-for contingencies, but may disburse budgeted for contingency funds incrementally to the awardee to ensure project stability and continuity. The policy must also require awardees to provide verifiable documentation to support any amounts proposed for contingency and support requests for the release of contingency funds with evidence of a bona fide need and that the amounts sought are reasonable, allocable, and allowable, and record and report all expenditures to the Foundation.

Directs the Foundation to work with awardees who have received awards with contingency provisions made before the date of the enactment of this Act to determine if any of their use of contingency funds represent out-of-scope changes for the Foundation's prior written approval and if these changes are found, to identify any financial action that may be appropriate.

States that the Foundation may provide management fees under an award only if the awardee provides a justification as to the need for such funds. In such cases, the Foundation shall take into account the awardee's overall financial circumstances.

Requires all award applicants to provide income and financial information dating back no less than three years to the Foundation. All awardees must also report annually to the Foundation any sources of non-Federal funds over \$50,000. Requires the awardees to track and report all expenses reimbursed or paid for with management fee funds to the Foundation. The Inspector General of the Foundation may audit any award for compliance.

Prohibits an awardee from using management fees for costs allowable under Cost Principles Uniform Guidance in 2 C.F.R. part 14 200, alcoholic beverages, tickets to concerts, sporting or other entertainment events, vacation or other travel for non-business purposes, charitable contributions except for a charitable contribution of direct benefit to the project or activity supported by the management fee, social or sporting club memberships, meals or entertainment for non-business purposes, luxury or personal items, lobbying, or any other purpose the Foundation determines inappropriate. All management fee usage will be reviewed by the Foundation for each award on at least an annual basis for compliance.

Directs that within 12 months of enactment, the Foundation will submit a report to Congress describing the Foundation's policies for developing, assessing, and managing major multi-user research facility costs, including a description of any aspect of those policies that differ from the best practices recommended in the GAO Report.

Requires the NSF Director to ensure that the Foundation will take enforcement actions specified in 2 C.F.R. part 200 for non-compliance.

#### *Section 4. Whistleblower education*

This section states that NSF must provide education and training for Foundation managers and staff on Section 4712 in the U.S. Code, the Pilot Program for Enhancement of Contractor Employee Whistleblower Protections. This information must also be transmitted to all NSF awardees, contractors, and employees of such awardees and contractors.

#### EXPLANATION OF AMENDMENTS

A manager's amendment offered by Representative Barry Loudermilk was adopted by the Committee. The amendment made minor and technical changes.

An amendment offered by Representative Eddie Bernie Johnson was adopted by the Committee. The amendment changed "cost proposal audit" to "external cost proposal analysis" in Section 3.

#### COMMITTEE CONSIDERATION

On April 27, 2016, the Committee met in open session and ordered reported favorably the bill, H.R. 5049, as amended, by voice vote, a quorum being present.

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill provides for improved management and oversight of major multi-user research facilities funded by the National Science Foundation. As such this bill does not relate to employment or access to public services and accommodations.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 5049, the *NSF Major Research Facility Reform Act of 2016*, would provide for improved management and oversight of major multi-user research facilities funded by the National Science Foundation.

#### DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 5049 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 5049 does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

## FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

## UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

## EARMARK IDENTIFICATION

H.R. 5049 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI.

## COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 5049. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

## BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 5049 from the Director of Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 31, 2016.*

Hon. LAMAR SMITH,  
*Chairman, Committee on Science, Space, and Technology,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5049, the NSF Major Research Facility Reform Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marin Burnett.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 5049—NSF Major Research Facility Reform Act of 2016*

H.R. 5049 would direct the National Science Foundation (NSF) to audit its major multi-user research facilities. Those facilities are centers for research in various fields including physics, astronomy, geosciences, engineering, and nanotechnology. In 2015, \$1.1 billion was appropriated to NSF for the operation, development, construction, and maintenance of more than 20 such facilities.

The bill also would authorize NSF to pay management fees as a part of their research awards under certain conditions and would require the agency to provide additional education and training for NSF managers and staff regarding employment protections for persons reporting a possible misuse of government funds.

Based on information from NSF, CBO estimates that conducting the audits required by the legislation would cost about \$2 million annually and \$10 million over the 2017–2021 period; such spending would be subject to the availability of appropriated funds. Other provisions would not have a significant cost.

Enacting H.R. 5049 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 5049 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5049 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Marin Burnett. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.