

defendants, the plaintiff's burden of proving damages, is, to an extent, lightened[,] and] the State need only provide the court with some relevant data from which the district court can make a reasonable estimated calculation of the harm suffered. \* \* \*) (citations and internal quotations omitted); *id.*, 202 F.3d at 89 rino do otherwise would be a perversion of fundamental principles of justice [and would] deny all relief to the injured person, and thereby relieve the wrongdoer from making any amends for his acts"); *New York v. Hendrickson Bros., Inc.*, 840 F.2d 1065, 1078 (2d Cir. 1988) ("The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created") (quoting *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 264 (1946)); *Fishman v. Estate of Wirtz*, 807 F.2d 520, 551 (7th Cir. Ill. 1986) ("The concept of a 'yardstick' measure of damages, that is, linking the plaintiffs experience in a hypothetical free market to the experience of a comparable firm in an actual free market, is also well accepted").

#### CONCLUSION

For the reasons stated above, the Court should direct DOJ to supplement the record to demonstrate why this settlement will prevent such violations in the future.

Respectfully submitted,

Peter McGowan  
General Counsel

By: Sean Mullany, Assistant Counsel Of Counsel, Public Service Commission, Of the State of New York, Three Empire State Plaza, Albany, New York 12223-1350.

Dated: December 30, 2011, Albany, New York

[FR Doc. 2012-5952 Filed 3-13-12; 8:45 am]

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#### NATIONAL SCIENCE FOUNDATION

##### Agency Information Collection Activities: Comment Request; Generic Survey Clearance for the Directorate of Education and Human Resources (EHR)

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995,

we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be received by May 14, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22030, or by email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov).

**FOR FURTHER INFORMATION CONTACT:** Suzanne Plimpton on (703) 292-7556 or send email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* EHR Generic Clearance.

*OMB Approval Number:* 3145-0136.

*Expiration Date of Approval:* July 31, 2012.

*Abstract:* The National Science Foundation (NSF) requests renewal of program accountability and communication data collections (e.g., surveys, face-to-face and telephone interviews, observations, and focus groups) that describe and track the impact of NSF funding that focuses on the Nation's science, technology, engineering, and mathematics (STEM) education and STEM workforce. NSF funds grants, contracts, and cooperative agreements to colleges, universities, and other eligible institutions, and provides

graduate research fellowships to individuals in all parts of the United States and internationally.

The Directorate for Education and Human Resources (EHR), a unit within NSF, promotes rigor and vitality within the Nation's STEM education enterprise to further the development of the 21st century's STEM workforce and public scientific literacy. EHR does this through diverse projects and programs that support research, extension, outreach, and hands-on activities that service STEM learning and research at all institutional (e.g., pre-school through postdoctoral) levels in formal and informal settings; and individuals of all ages (birth and beyond). EHR also focuses on broadening participation in STEM learning and careers among United States citizens, permanent residents, and nationals, particularly those individuals traditionally underemployed in the STEM research workforce, including but not limited to women, persons with disabilities, and racial and ethnic minorities.

At the request of OMB an EHR Generic Clearance was established in 1995 to integrate management, monitoring, and evaluation information pertaining to the NSF's Education and Training (ET) portfolio in response to the Government Performance and Results Acts (GPRA) of 1993. Under this generic survey clearance (OMB 3145-0136), data from the NSF administrative databases are incorporated with findings gathered through initiative-, divisional-, and program-specific data collections. The scope of the EHR Generic Clearance primarily covers descriptive information gathered from education and training projects that are funded by NSF. Most programs subject to EHR Generic data collection are funded by the EHR Directorate, but some are funded in whole or in part by disciplinary directorates or multi-disciplinary or cross-cutting programs. Since 2001 in accordance with OMB's Terms of Clearance (TOC), NSF primarily uses the data from the EHR Generic Clearance for program planning, management, and audit purposes to respond to queries from the Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), and the NSF's Office of the Inspector General.

OMB has limited the collection to three categories of descriptive data: (1) Staff and project participants (data that are also necessary to determine individual-level treatment and control groups for future third-party study); (2) project implementation characteristics (also necessary for future use to identify

well-matched comparison groups); and (3) project outputs (necessary to measure baseline for pre- and post-NSF-funding-level impacts).

*Use of the Information:* This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project, and strategic goals, and as identified by the President's Accountability in Government Initiative; GPRA, and the NSF's Strategic Plan. The Foundation's FY 2006–2011 Strategic Plan describes four strategic outcome goals of Discovery, Learning, Research Infrastructure, and Stewardship. NSF's complete strategic plan may be found at: [http://www.nsf.gov/publications/pub\\_summ.jsp?ods\\_key=nsf0648](http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf0648).

Since the EHR Generic Clearance research is primarily used for accountability purposes, including responding from queries from COVs and other scientific experts, a census rather than sampling design typically is necessary. At the individual project level funding can be adjusted based on individual project's responses to some of the surveys. Some data collected under the EHR Clearance serve as baseline data for separate research and evaluation studies.

In order to conduct program- or portfolio-level evaluations, however, both experimental and quasi-experimental evaluation research studies on STEM education interventions require researchers to identify individual-level and organization- or project-level control and treatment groups or comparison groups. NSF-funded contract or grantee researchers and evaluators in part may identify control, comparison, or treatment groups for NSF's ET portfolio using some of the descriptive data gathered through OMB 3145–0136 to conduct well-designed, rigorous research and portfolio evaluation studies.

In accordance with the 2001, 2005, 2008, and 2011 OMB Terms of Clearances, NSF requests separate stand-alone clearance (and separately announces for comment in the **Federal Register**) any program or portfolio research or evaluation.

*Respondents:* Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, local or tribal government.

*Number of Respondents:* 8,494.

*Burden of the Public:* The total estimate for this collection is 65,868 annual burden hours. This figure is based on the previous 3 years of collecting information under this

clearance and anticipated collections. The average annual reporting burden is between 1.5 and 72 hours per “respondent,” depending on whether a respondent is a direct participant who is self-reporting or representing a project and reporting on behalf of many project participants.

Dated: March 9, 2012.

**Suzanne H. Plimpton,**  
*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2012–6185 Filed 3–13–12; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Buy American Waiver Under the American Recovery and Reinvestment Act of 2009

**AGENCY:** National Science Foundation (NSF).

**ACTION:** Notice.

**SUMMARY:** NSF is hereby granting a limited exemption of section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, 123 Stat. 115, 303 (2009), with respect to the purchase of the deformable mirror system that will be used in the Advanced Technology Solar Telescope (ATST). This system is required in order to achieve the requisite spatial resolution to study the finest details of magnetic features in the solar atmosphere.

**DATED:** March 14, 2012.

**ADDRESSES:** National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna-Lee Misiano, Division of Acquisition and Cooperative Support, 703–292–4339

**SUPPLEMENTARY INFORMATION:** In accordance with section 1605(c) of the Recovery Act and section 176.80 of Title 2 of the Code of Federal Regulations, the National Science Foundation (NSF) hereby provides notice that on March 6, 2012 the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency, granted a limited project exemption of section 1605 of the Recovery Act (Buy American provision) with respect to the deformable mirror system (DMS) that will be used in the ATST. The basis for this exemption is section 1605(b)(2) of the Recovery Act, in that deformable mirrors of satisfactory quality that meet the specifications required for diffraction-limited observations of the sun are not produced by vendors in the United States in sufficient and

reasonably available commercial quantities. The total cost of DMS, approximately \$3 million, represents approximately 2 percent of the total \$146 million Recovery Act award provided for construction of the ATST and about 1 percent of the total project cost.

## I. Background

The Recovery Act appropriated \$400 million to NSF for several projects being funded by the Foundation's Major Research Equipment and Facilities Construction (MREFC) account. The ATST is one of NSF's MREFC projects. Section 1605(a) of the Recovery Act, the Buy American provision, states that none of the funds appropriated by the Act “may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.”

The ATST construction is being funded under a cooperative agreement awarded to the Association of Universities for Research in Astronomy (AURA) that began in 2009. The project is currently under construction.

Subsections 1605(b) and (c) of the Recovery Act authorize the head of a Federal department or agency to waive the Buy American provision if the head of the agency finds that: (1) Applying the provision would be inconsistent with the public interest; (2) the relevant goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent. If the head of the Federal department or agency waives the Buy American provision, then the head of the department or agency is required to publish a detailed justification in the **Federal Register**. Finally, section 1605(d) of the Recovery Act states that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

## II. Finding That Relevant Goods Are Not Produced in the United States in Sufficient and Reasonably Available Quality

The science goals of the ATST require that the telescope operate at the so-called diffraction limit in order to resolve spatial features in the solar atmosphere with sizes of order 20 to 30 kilometers. Comparing this size to the average distance to the sun of about 150,000,000 kilometers leads to the