NIH Policy Manual

26307-31 - Institutes, Centers and Offices (ICOs) Equipment and Building Damage Compensation Policy

Issuing Office: OD/OM/ORFDO **Phone:** (301) 594-0999

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Transmittal Notice

1. **Explanation of Material Transmitted:** This chapter provides the policy and procedures to address the equitable compensation for NIH buildings, systems, or scientific equipment damaged during a force majeure event or as a result of negligence by the Office of Research Facilities Development and Operations (ORFDO) or an Institute, Center and Office (ICO).
2. **Filing Instructions:**

Remove: Manual Issuance 26307-31, dated 03/26/2013

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PLEASE NOTE: For information on:

- Content of this chapter contact the issuing office listed above.
- NIH Policy Manual, contact the Division of Management Support, OMA on 301-496-4606, or enter this URL: https://oma.od.nih.gov/DMS/Pages/Manual-Chapters.aspx.

A. Purpose

This chapter establishes the policy and procedures to govern the equitable compensation for damage to NIH buildings, systems or scientific equipment resulting from a force majeure event or negligence by the Office of Research Facilities Development and Operations (ORFDO) or an Institute, Center and Office (ICO).

B. Scope

The scope of this manual issuance covers all NIH-owned facilities with a structured process in place to assess, resolve and compensate parties for property and equipment damages that

might result from catastrophic or unpredictable events that take place. NIH leased facilities are not covered by this policy.

C. Background

On December 14, 2011, the NIH Facilities Working Group (FWG) identified the need for a policy to be developed for when ICO scientific equipment or NIH buildings and supporting systems are damaged under various scenarios to provide a transparent, predictable and equitable means of compensation for the loss.

D. Policy

The ORFDO is the steward of NIH-owned facilities and is responsible for ensuring safe, reliable and efficient operations of all real property assets to support the NIH mission. In this role, ORFDO works collaboratively with NIH ICO's to identify the root cause, solution, and fair and equitable compensation for damage to scientific equipment, NIH buildings or systems resulting from natural or force majeure events that take place.

E. Responsibilities

Pre-Event Responsibilities

3. Institutes, Centers and Offices (ICOs):
    a. The ICO investigator or representative responsible for the planning, procurement and/or use of equipment must;
        i. Submit a Construction Request to ORFDO for the installation of scientific equipment that requires connections to the building and/or utility distribution systems.
        ii. For equipment installations in the NIH Clinical Center Complex on the Bethesda campus, submit a Project Notification Form (PNF) to ORFDO's Project Notification Team (PNT) for Construction Risk Assessment (CRA) and Interim Life Safety Measures (ILSM) guidance.
        iii. Must follow applicable NIH Turnkey Acquisition guidelines.
    b. Must comply with NIH Policy Manual 6307-3– Special Clearance and Other Acquisition Procedures;
    c. Maintain ICO-owned equipment; and
    d. Partner with ORFDO in the identification and resolution of property and equipment damages resulting from catastrophic or unpredictable building events.
4. Office of Research Facilities Development and Operations (ORFDO):
    a. Reviews ICOs Construction Requests to install equipment in NIH owned facilities;
    b. Provides technical guidance to ICOs to support equipment installations consistent with NIH Policy Manual 6307-3, the NIH Design Requirements

Manual, and other applicable codes, standards and guidelines;

c. Provides safe and effective facilities for the NIH to conduct and support biomedical and behavioral research and training;
d. Services the physical plant to ensure reliable operation of the complex systems that support NIH;
e. Installs equipment that supports building operations consistent with manufacturer's guidelines and applicable building codes and standards.
f. Performs preventative and predictive maintenance and repairs of building systems and equipment to support optimal performance and product service life;
g. Responds to emergency and force majeure building events;
h. Partners and collaborates with ICOs to conduct a Root Cause Analysis of emergency events to determine an equitable compensation for damages to ICO scientific equipment or NIH buildings or building systems resulting from the event. See Appendix 1 - Damage Assessment Procedures.

5. Office of Research Services (ORS), Division of the Fire Marshal (DFM):
    a. For equipment installations in the NIH Clinical Center Complex on the Bethesda campus, reviews Project Notification Forms submitted by ICO's and provides ILSM guidance; and
    b. Reviews each equipment installation request in NIH owned facilities as required by NIH Policy Manual 1370.

F. Post-Event Procedures, Determination of Equitable Compensation

In the event of an emergency condition in an NIH owned building:

3. Institutes, Centers and Offices (ICOs):
    a. Building occupants are required to notify both the NIH Fire Department @ 911 and ORFDO @ 301-435-8000; and
    b. Building occupants should only attempt to protect equipment when life safety (fire, smoke, potential of structural collapse) concerns are not present.
4. Office of Research Services (ORS), Division of the Fire Marshal:
    a. Will determine the cause and origin of incidents involving fires or sprinkler activations in cases where equipment is damaged.
5. Office of Research Facilities development and Operations (ORFDO)
    a. Will determine the cause and origin of all other incidents;
        i. The key determination is whether the event was a force majeure event or caused by negligence.
    b. If the event was a force majeure event, or if neither ORFDO nor an ICO was negligent, then the ICO will pay for the repair or replacement of damaged scientific equipment and ORFDO will pay to repair damages to buildings or building systems.
    c. If the event was caused by negligence (either by ORFDO, the ICOs, or both parties), ORFDO and the ICOs will conduct good faith negotiations to reach a fair and equitable agreement to cover the damages. Four (4) of the possible

permutations include:

i. Damages were caused by the Building System, with no ORFDO negligence involved;
ii. Damages were caused by the Building System, with ORFDO negligence involved;
iii. Damages were caused by the ICO Equipment, with no ICO negligence; and
iv. Damages were caused by the ICO Equipment, with ICO negligence.

In the event that ORFDO and the ICOs cannot reach an agreement on the cause of the damage; whether the damaged scientific equipment should be repaired ,or replaced; or any other matter relating to damages caused by NIH buildings or building systems or by ICO scientific equipment:

2. NIH Space Recommendation Board (SRB)
    a. If an agreement still cannot be reached within twenty (20) calendar days, the SRB will serve as the arbitrator to identify the cause(s) of the damage, whether the event was due to negligence, assess responsibility for the event and the equitable cost of the corrective action.
3. NIH Facilities Working Group (FWG)
    a. Makes the final decision when disputes

See Appendix 2 – Disputes Resolution Process.

In the event ICO or ORFDO funds are not available to cover the total costs they are responsible for; a multi-year reimbursement schedule shall be negotiated. Reimbursements are subject to all applicable appropriation laws, guidelines and policies. If ICO equipment or a building component or system is damaged, the reimbursement will be based on the lesser of the cost to repair or replace the item.

Replacement cost of scientific equipment will be determined using a five-year linear depreciation model based on the original purchase price of the damaged scientific equipment. For example, if the original purchase price of a piece of equipment was $100,000, it was 3 years old at the time of the damage, and it is beyond economical repair, the remedy would be $40,000 ($100,000 minus a depreciation amount of $60,000).

See Appendix 3 – Flow Diagram 1, for the compensation and damage resolution process.

G. References & Required Forms

1. NIH Policy Manual Chapter 1743 "Keeping and Destroying Records";
2. NIH Policy Manual Chapter 6307-3 "Special Clearance and Other Acquisition Procedures"
    a. ORFDO's Construction Request
    b. ORFDO's Project Notification Form (PNF)

H. Definitions

1. **Building system** – includes but is not limited to the mechanical, electrical, plumbing and other distribution systems that support building operations.
2. **Emergency event** – a sudden, urgent, unforeseen happening that threatens life, health, property or the environment. This could include but is not limited to a natural or man-made event such as an electrical malfunction, a water leak, fire, smoke, or structural problem.
3. **Force majeure event** – an unplanned and unpredicted event that is outside the control of any party, that could not be avoided by the exercise of due care, and that results in damage of some kind, usually caused by an unexpected external event arising by chance or an "Act of God." Examples could include earthquakes, tornadoes, extremely high winds, excessive snowfall, acts of terrorism or acts of vandalism.
4. **Negligence** – the failure to exercise the care expected of a reasonably prudent person under similar circumstances; marked by or given to neglect especially habitually or culpably; or conduct which falls below the standard established by law for the protection of others.
5. **Scientific equipment** – equipment that is needed to operate a laboratory, a hospital, a clinic, a clinical patient care unit, an animal care facility, or is specific to a single purpose and not generally suitable for other purposes.

Appendix 1: Damage Assessment Procedures

Damage assessment procedures vary with each emergency. The following should be considered when developing the Root Cause Analysis and Equipment Compensation Plan as a result of an incident (this list is a starting point and not all factors listed are necessarily applicable to each event that takes place, and factors other than those listed might also be relevant):

- Location of emergency;
- Origin of the emergency or disruption;
- Owner of the equipment, if applicable;
- Potential for additional disruptions or damage to the area affected by the emergency;
- Status of physical infrastructure;
- Inventory and status of the equipment;
- Type of damage to equipment;
- Items to be replaced or repaired; and
- Estimated time to restore normal services if emergency procedures were not in place.

Furthermore, the assessment should include lessons-learned and recommendations to prevent future occurrences of a similar nature although there are no guarantees that an equally devastating, unpredictable event would not happen again.

Depending on the extent of the damage from the event, a remediation plan should be established by the assessment team. The remediation plan should include, at a minimum:

- List of systems and services that need to be restored;
- Their interdependencies and sequence of restoration;
- Plan of Action and Milestones (POA&M) to restore systems and services;
- Instructions for reporting failures to the team leads; and a
- Communication Plan for team interactions.

Appendix 2: Disputes Resolution Process

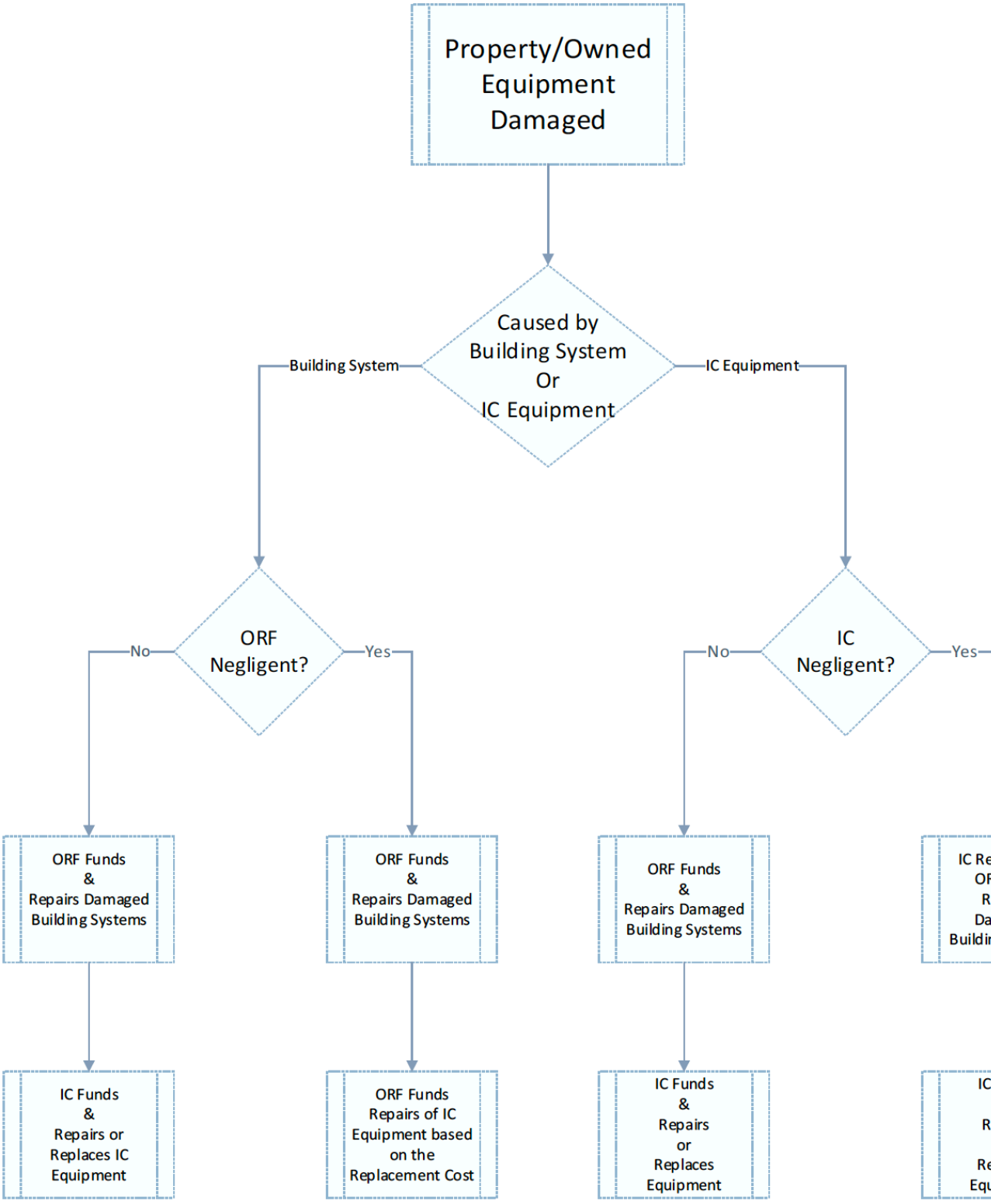
Resolution of disputes should begin at the lowest possible level where expertise exists regarding the damage. The user of the equipment and a fiscally responsible individual in that ICO, e.g. Branch Chief or Administrative Officer, should negotiate with the appropriate ORFDO representative, e.g. maintenance or Branch Chief regarding the cause of damage, whether negligence occurred, the allocation of damages, and other issues relating to damaged equipment or NIH buildings or systems resulting from negligence by an ICO, ORFDO, or both.

Negotiations should take place in good faith, recognizing mutual interests in the attempt to reach an equitable solution satisfactory to both parties. If an agreement cannot be reached within twenty (20) calendar days, then upon notice by either party, all disputes, claims, questions, or differences shall be elevated to the next level such as the Division Director. The next level of intervention would be the ICO Director, the ORFDO and/or the ORS Director as applicable. If this occurs, the parties may consult with experts as necessary to make findings of fact or responsibilities for damages that take place.

If an agreement still cannot be reached within twenty (20) calendar days, the Space Recommendation Board (SRB) will serve as the arbitrator to identify the cause(s) of the damage, whether the event was due to negligence, assess responsibility for the event and the equitable cost of the corrective action. If the decision continues to be disputed, the appeal will go to the NIH Facilities Working Group for final resolution.

Appendix 3: Flow Diagram 1 – Compensation and Resolution Process

Flow Diagram 1 provides a pictorial summary of the compensation and resolution process.



Note: All expenditures are subject to appropriation laws, guidelines, regulations, and other requirements.