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112TH CONGRESS
1ST SESSION

H. R. 3433

To amend title 31, United States Code, to provide transparency and require certain standards in the award of Federal grants, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2011

Mr. LANKFORD (for himself, Mr. ISSA, Mr. KELLY, Mr. MEEHAN, and Mr. PIERLUISI) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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A BILL

To amend title 31, United States Code, to provide transparency and require certain standards in the award of Federal grants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Grant Reform and New Transparency Act of 2011'' or the ''GRANT Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Grants transparency requirements.

Sec. 4. Report requirements relating to grants.
Sec. 5. Plan for improving the single audit process.

SEC. 3. GRANTS TRANSPARENCY REQUIREMENTS.

(a) GRANTS TRANSPARENCY REQUIREMENTS.—

(1) IN GENERAL.—Subtitle V of title 31, United States Code, is amended by inserting after chapter 73 the following new chapter:

"CHAPTER 74—GRANTS TRANSPARENCY REQUIREMENTS

''Sec.
''7401. Definitions.
''7402. Competition requirements in awarding grants.
''7403. Pre-award evaluation requirements.
''7404. Website relating to Federal grants.
''7405. Debriefing.

"§ 7401. Definitions

''In this chapter:

''(1) GRANT.—The term 'grant' means an award of Federal financial assistance through a grant agreement or cooperative agreement making payment in cash or in kind to a recipient to carry out a public purpose authorized by law.

''(2) COMPETITIVE GRANT.—The term 'competitive grant' means a grant entered into through the use of merit-based selection procedures for the purpose of allocating funds authorized under a grant program of an Executive agency.

''(3) EXECUTIVE AGENCY.—The term 'Executive agency' has the meaning provided by section

105 of title 5, except the term does not include the Government Accountability Office.

"(4) BOARD.—The term 'Board' means the Recovery Accountability and Transparency Board or any successor entity.

"(5) PROPOSAL ABSTRACT.—The term 'proposal abstract', with respect to a grant proposal, means a summary containing key elements of the grant proposal.

"(6) GRANT REVIEWER.—The term 'grant reviewer', with respect to a grant—

"(A) means any individual who reviews, evaluates, or participates in the decision to select a grant applicant for award of the grant; and

"(B) includes—

"(i) a peer reviewer;

"(ii) a merit reviewer; and

"(iii) a member of a technical evaluation panel or board or a special emphasis panel.

"§ 7402. Merit-based selection procedure requirements in awarding grants

"(a) MERIT-BASED SELECTION PROCEDURES REQUIRED.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an Executive agency shall use merit-based selection procedures in awarding grants.

"(2) EXCEPTION FOR CERTAIN GRANTS.—An Executive agency is not required to use merit-based selection procedures in awarding a grant if the grant is a block grant or formula grant for which Federal funds are required to be allocated in accordance with a distribution formula prescribed by law or regulation, or any other grant in which the allocation methodology for the grant funds is mandated by law.

"(b) REQUIREMENT FOR SPECIFIC MERIT-BASED SELECTION PROCEDURES.—Each Executive agency shall establish and make publicly available specific merit-based selection procedures for each grant program of the agency required under subsection (a) to use such procedures.

"(c) MERIT-BASED SELECTION PROCEDURES DESCRIBED.—

"(1) IN GENERAL.—The merit-based selection procedures required under subsection (a) shall promote the use of competition, and may be tailored to the particular requirements, objectives, and authorities of the agency. The procedures may address matters such as consideration of unsolicited proposals, standards for obtaining a competitive pool of appli-

cants, and exceptions for safety, security, or other circumstances.

"(2) SPECIFIC MATTERS INCLUDED.—The merit-based selection procedures required under subsection (a) shall include, with respect to a grant, the following:

"(A) Advance notification of the grant opportunity.

"(B) A clear statement of the purpose, duration (including anticipated grant continuations), and eligibility requirements of the grant.

"(C) A description of the manner in which applications or proposals for the grant will be evaluated, ranked, and selected for award, including the weighting of any evaluation factors or criteria that will be considered.

"§ 7403. Pre-award evaluation requirements

"(a) EVALUATION REQUIRED.—Before awarding a competitive grant, an Executive agency shall conduct an evaluation of the ability of the prospective grantee to successfully carry out the grant.

"(b) MATTERS COVERED.—The evaluation required by subsection (a) shall include a review of the following:

"(1) FINANCIAL MANAGEMENT SYSTEM.—The capability of the financial management system of the applicant to account for funds.

"(2) INTERNAL CONTROLS.—The internal financial and administrative control systems of the applicant.

"(3) COMPLIANCE WITH REPORTING.—The capability of the applicant to comply with Federal reporting requirements for recipients of Federal funds.

"(4) PAST PERFORMANCE AND INTEGRITY.—The past performance and record of integrity of the applicant.

"(5) OTHER QUALIFICATIONS AND COMPETENCE.—The ability of the applicant to successfully carry out the purposes of the grant.

"(c) SIMPLIFIED EVALUATION PROCEDURE FOR CERTAIN APPLICANTS.—In conducting the evaluation required under subsection (a) with respect to an applicant, an Executive agency shall minimize the burden on any applicant that has previously received a significant volume of Federal grants, and shall consider any existing findings with respect to that applicant under the single audit process under chapter 75 of title 31 related to the matters in subsection (b).

"§ 7404. Website relating to Federal grants

''(a) REQUIREMENT.—The Director of the Office of Management and Budget shall upgrade any existing or proposed public website for finding Federal grant opportunities and applying for such grants so that such website may serve as a central point of information and provide full access for applicants for competitive grants. The website shall capture in one site, or provide electronic links to, other relevant databases.

''(b) NOTICE OF COMPETITIVE GRANT FUNDS AVAILABILITY.—At the time an Executive agency issues a solicitation or otherwise announces the availability of funds for a competitive grant, the agency shall post on the grants website maintained under this section relevant information about the grant opportunity, including the following:

''(1) ANNOUNCEMENT AND PURPOSE.—The grant announcement and purpose of the grant.

''(2) GRANT PERIOD.—The time period for performance of the grant and whether the agency anticipates that the grant will be continued.

''(3) AMOUNT OF AVAILABLE FUNDS.—The amount of funds available for the grant.

''(4) ELIGIBILITY.—A statement of eligibility requirements of the grant.

"(5) AGENCY POINT OF CONTACT.—Contact information for the Executive agency, including the name, telephone number, and electronic mail address of a specific person or persons responsible for answering questions about the grant and the application process for the grant.

"(6) EVALUATION FACTORS OR CRITERIA.—A clear statement of the evaluation factors or criteria that the agency intends to use to evaluate and rank grant applications or proposals submitted, including the weight to be applied to each factor or criterion.

"(7) DISCLOSURE OF THE PROCESS AND STANDARDS FOR SAFEGUARDING AGAINST CONFLICTS.—A description of the process and standards to be used by the agency to determine that each grant reviewer does not have a prohibited conflict of interest, as defined by applicable statute or regulation, with respect to the evaluation or review of a grant application or proposal, or the decision to award a grant.

"(8) DEADLINE.—The deadline for submission of grant applications or proposals.

"(c) USE BY APPLICANTS.—The grants website maintained under this section shall, to the greatest extent practicable, allow grant applicants to—

"(1) use the website with any computer platform;

"(2) search the website for all competitive grants by purpose, funding agency, program source, and other relevant criteria;

"(3) apply for a competitive grant using the website;

"(4) manage, track, and report on the use of competitive grants using the website; and

"(5) provide all required certifications and assurances for a competitive grant using the website.

"(d) GRANT AWARD INFORMATION.—

"(1) IN GENERAL.—For each competitive grant awarded by an Executive agency, the agency shall post on the grants website maintained under this section the information described in paragraph (2). Except as provided in paragraphs (2)(B) and (3), the information shall be posted within 15 days after an Executive agency notifies an applicant that the applicant has been selected to receive a grant award and shall be updated as necessary while the grant to the recipient is being performed.

"(2) INFORMATION POSTED.—For purposes of paragraph (1), the information described in this sec-

tion with respect to each grant awarded by an Executive agency is the following:

"(A) EXECUTED GRANT AGREEMENT.—A copy of the final grant agreement, including the terms and conditions and the time period for performance of the grant.

"(B) COPY OF PROPOSAL, APPLICATION, OR PLAN.—Subject to paragraph (3), a copy of any proposal, application, or plan submitted for the awarded grant, including any amendment to the proposal, application, or plan (whether made before or after the award of the grant).

"(C) AWARD DECISION DOCUMENTATION AND RANKINGS.—Documentation explaining the basis for the selection decision for the grant, the number of proposals received for the grant, and, with respect to the proposal that resulted in the grant award, the numerical ranking of the proposal by grant reviewers, if numerical rankings were assigned.

"(D) JUSTIFICATION FOR DEVIATING FROM RANKINGS.—In any case in which the award of the grant is not consistent with the numerical rankings or any other recommendations made by grant reviewers, a written jus-

tification explaining the rationale for the decision not to follow the rankings or recommendations.

"(E) DISCLOSURE OF PEER REVIEWERS.—The name, title, and employer of each individual who served as a peer reviewer for the grant program concerned, during the six-month period preceding the award of the grant.

"(F) DISCLOSURE OF OTHER GRANT REVIEWERS.—The name, title, and employer of each individual who served as a reviewer (other than a peer reviewer) of proposals or applications for the grant, regardless of whether the individual is employed by the Federal government or not.

"(3) EXCEPTION TO POSTING REQUIREMENT.—Notwithstanding paragraphs (1) and (2)(B), if the head of the agency determines, with respect to a particular grant award, that posting the proposal, application, or plan at the time described in paragraph (1) would adversely affect an applicant, the agency—

"(A) may post a proposal abstract or executive summary; and

"(B) shall post the complete proposal, application, or plan by a date to be determined by the head of the agency, in consultation with the applicant, but not later than three years after the date of the grant award.

"(e) GRANT PERFORMANCE INFORMATION.—Unless otherwise prohibited by law, with respect to each grant awarded by an Executive agency, within 60 days after the end of the period for completion of the grant, the agency shall post on the grants website maintained under this section the following information:

"(1) The final report or other final written product required under the terms of the grant.

"(2) Other related data or results of the grant that the agency considers to be of value to future researchers or in the public interest.

"(f) SUBMISSION AND PUBLICATION OF GRANT SOLICITATION FORECAST ON THE GRANTS WEBSITE.—

"(1) REQUIREMENT.—Not later than November 30 of each year, the head of each Executive agency shall post a forecast, in accordance with paragraph (2), of all grant solicitations that the agency expects to issue for the following calendar year. The forecast shall be based on the best information available and shall not be binding on the agency.

"(2) MATTERS INCLUDED.—The forecast shall include, to the extent practicable, the following for each expected grant solicitation:

"(A) SUBJECT AND PURPOSE.—A brief description of the subject and purpose of the grant, organized by the organizational unit of the agency.

"(B) POINT OF CONTACT.—Contact information for the organizational unit or individual responsible for the grant, if known, including name, telephone number, and electronic mail address.

"(C) NOTICE PUBLICATION DATE.—The expected or actual dates for the issuance of the grant solicitation and application and the grant application submission deadline.

"(D) AWARD AMOUNT.—The estimated amount of the average grant award, the estimated maximum and minimum amounts of the grant award, if applicable, and the estimated total number of grant awards to be made.

"(g) PUBLICATION OF INFORMATION.—Nothing in this section shall be construed as requiring the publication of information otherwise exempt under section 552 of title

5, United States Code (popularly referred to as the 'Freedom of Information Act').

"(h) TRANSPARENCY OF INFORMATION.—To the extent practicable, the grants website maintained under this section shall—

"(1) make the information described in this section available in its original format;

"(2) make the information described in this section available without charge, license, or registration requirement;

"(3) permit the information described in this section to be searched and aggregated;

"(4) permit the information described in this section to be downloaded in bulk;

"(5) permit the information described in this section to be disseminated via automatic electronic means;

"(6) permit the information described in this section to be freely shared by the public, such as by social media;

"(7) use permanent uniform resource locators for the information described in this section; and

"(8) provide an opportunity for the public to provide input about the usefulness of the site and recommendations for improvements.

"§ 7405. Debriefing

''If requested by an applicant for a competitive grant, for each grant award made in an amount in excess of $100,000 pursuant to a merit-based selection procedure, an Executive agency shall provide the applicant with a timely debriefing explaining the basis for the agency's award decision, including, if applicable, the decision not to award a grant to the applicant.''.

(2) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle V of title 31, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

"74. Grant Transparency Requirements ..... **7401"**.

(b) GUIDANCE FOR MERIT-BASED SELECTION PROCEDURES FOR GRANT PROGRAMS.—Not later than 60 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall issue and disseminate guidance to aid Executive agencies in establishing merit-based selection procedures for agency grant programs, as required by section 7402(c) of title 31, United States Code, as added by subsection (a).

(c) DEADLINE FOR MERIT-BASED SELECTION PROCEDURES FOR GRANT PROGRAMS.—Not later than 180 days after the date of the enactment of this Act, each Ex-

ecutive agency shall carry out the requirement of section 7402(c) of such title, as so added.

(d) REPORT ON MERIT-BASED SELECTION PROCEDURES FOR GRANT PROGRAMS.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the guidance issued by the Director of the Office of Management and Budget under subsection (b) and the actions taken by Executive agencies to establish merit-based selection procedures under subsection (c).

SEC. 4. REPORT REQUIREMENTS RELATING TO GRANTS.

(a) UNDISBURSED GRANT FUNDING REPORT.—

(1) GUIDANCE.—Not later than 90 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall issue guidance to Executive agencies instructing each agency to identify amounts of undisbursed grant funding remaining in grant accounts for which the period of availability to the grantee has expired and report to the Office of Management and Budget on the status and resolution of such funding.

(2) REPORT REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Director shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report summarizing the information reported by Executive agencies under subsection (a) and describing the actions the Director or Executive agencies plan to take with respect to the undisbursed grant funding identified in the information so reported.

(b) GRANTS WORKFORCE REPORT.—

(1) REPORT REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the Federal grants workforce.

(2) CONTENTS OF REPORT.—The report required under subsection (a) shall address—

(A) the size of the Federal grants workforce and expected trends in Federal employment;

(B) adequacy of training opportunities for the Federal grants workforce;

(C) whether the Federal Acquisition Institute or any other existing entity engaged in acquisition workforce training should be made available for grant training;

(D) whether a warrant system similar to that used in the Federal acquisition system should be established for Federal officials authorized to award grants;

(E) the use by executive agencies of suspension and debarment actions taken against grantees during the three-year period preceding the date of submission of the report, and the level of agency resources assigned to the suspension and debarment functions; and

(F) any recommendations for improving the Federal grants workforce.

(c) DEFINITIONS.—In this section:

(1) EXECUTIVE AGENCY.—The term ''Executive agency'' has the meaning provided by section 105 of title 5, United States Code, except the term does not include the Government Accountability Office.

(2) FEDERAL GRANTS WORKFORCE DEFINED.—The term ''Federal grants workforce'', with respect

to an Executive agency, means all employees of the agency who spend some or all of their time engaged in—

(A) grant planning;

(B) preparing grant solicitations, Notices of Funding Availability, or other requests for grant proposals;

(C) evaluating or reviewing grant applications, including serving on a peer review board; or

(D) monitoring or administering grant performance by grantees.

SEC. 5. PLAN FOR IMPROVING THE SINGLE AUDIT PROCESS.

(a) PLAN FOR IMPROVING THE SINGLE AUDIT PROCESS.—Not later than 180 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a plan on improving the single audit process required under chapter 75 of title 31, United States Code, that includes each of the following elements:

(1) A centralized Federal Government oversight structure for the single audit process to monitor Federal agency implementation of single audit requirements under chapter 75 of title 31, United States Code.

(2) Simplified alternative single audit requirements for non-Federal entities with expenditures for smaller Federal awards.

(3) A proposal to shorten the single audit cycle, including the time periods for completing the audit and for Executive agency resolution of the audit.

(4) An identification of any necessary legislative changes to implement any proposal under the plan.

(5) A description of key milestones for implementation and necessary steps to complete implementation.

(b) REPORT.—Not later than 180 days after the plan is submitted under subsection (a), the Director of the Office of Management and Budget shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the implementation of each element of the plan.

(c) DEFINITIONS.—In this section:

(1) EXECUTIVE AGENCY.—The term ''Executive agency'' has the meaning provided by section 105 of title 5, United States Code, except the term does not include the Government Accountability Office.

(2) NON-FEDERAL ENTITY.—The term ''non-Federal entity'' has the meaning given that term under section 7501 of title 31, United States Code.

(3) SINGLE AUDIT.—The term ''single audit'' has the meaning provided by section 7501(a)(18) of title 31, United States Code.

(4) SMALLER FEDERAL AWARD.—The term ''smaller Federal award'' means a Federal award of less than $1,000,000 or such other amount specified by the Director of the Office of Management and Budget.

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