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GRANT REFORM AND NEW TRANSPARENCY ACT OF 2011

MAY 15, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3433]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (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, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

19–006

Page 2, after line 7, strike the item relating to section 7402 in the table of contents proposed to be inserted and insert the following:

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

Page 11, line 5, strike "name, title, and employer" and insert "employer, and either the name and title or a unique identifier,".

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

From 1990 to 2010, Federal outlays for grants more than quadrupled, rising from $135 billion to more than $600 billion. In FY 2010, grants consumed nearly one-fifth of the entire Federal budget. Despite this increased grant spending, which seems likely to continue, little attention has been paid to ensuring that grants are awarded fairly and transparently, or that grant funds are accomplishing the purposes for which they are intended. The dramatic surge in Federal grant spending has left taxpayer dollars vulnerable to waste, fraud, mismanagement, and abuse. Identifying and reducing these vulnerabilities in the awarding and administering of grant programs has never been as critical as it is today. Transparency can provide a check on waste, fraud, and abuse in government spending.[1] Today, however, all too often, Federal grant spending is carried out in an opaque and relatively secretive way.

H.R. 3433, the Grant Reform and New Transparency Act of 2011, or GRANT Act, is intended to strengthen Federal grant programs on a government-wide basis. The bill aims to improve the grant process at all stages of the grant life cycle. The bill requires greater accountability in grantees' use of grant funds, addresses the agency close-out process following completion of the grant, and directs attention to the need for a highly trained workforce to effectively award and administer Federal grant funds.

The centerpiece of the bill, however, is the enhanced transparency it brings to discretionary grant spending. The bill requires transparency in the decision-making process surrounding the award of discretionary grants. The bill opens Federal grant spending to closer scrutiny by the public, watchdog groups, media, Executive-Branch management, and Congress.

The bill's transparency provisions apply only to discretionary grants—not to formula grants, block grants, or entitlements. The curtailing of earmarks means that the Executive Branch has greater discretion to allocate funds among projects. American taxpayers have the right to expect free access to accurate, comprehensive, and useful information describing how Federal agencies exercise that discretion. The bill requires that agencies use merit-based selection procedures that promote the use of competition. It does not prescribe the precise procedures to be used to carry out specific grant programs. What it does is establish baseline standards, such as requiring advance notice of grant opportunities and the disclosure of the evaluative criteria that will be used in selecting among grant applications. Agencies have flexibility to address specific matters

[1] *See, e.g.,* Testimony of Earl Devaney before the Committee on Oversight and Government Reform, June 14, 2011, *available at* http://oversight.house.gov/images/stories/Testimony/Devaney_Testimony_2.pdf, at 4 ("Devaney Testimony") ("Transparency can cause embarrassment, which, in turn, causes self-correcting behavior").

that may be important to their mission, such as the consideration of unsolicited proposals or the enumeration of appropriate exceptions to general procedures.

The bill's transparency provisions require that grant award information, including a copy of the successful grant application, be posted on a grants website. Importantly, under the bill, agencies are not required to post any information on the website that would otherwise be exempt under the Freedom of Information Act. The Committee expects that agencies will develop procedures and safeguards to protect proprietary or privileged information, including patentable ideas or trade secrets, from being disclosed. The Committee believes that the grant applicant is in the best position to initially identify material in its application or proposal that should be considered for redaction prior to posting on a publicly accessible website. The Committee expects that agencies can meet the bill's requirements while preserving the confidentiality of certain information by requesting that applicants submit a publicly available version of an application either at the time it submits an application, or within 15 days after notice of award. In addition, the bill allows the agency to delay the public disclosure of the application or redacted application of a successful applicant, under limited circumstances, for up to three years.

The bill is intended to also bring transparency to the agency's competitive grant decision-making process by requiring disclosure of the award decision documentation and rankings of successful applications. Applicants and the public should be able to understand from information posted on an agency's website why a decision was made to choose a particular grant applicant from among a pool of competing applicants. In this regard, it is common practice for agencies to provide scores and rankings to proposals received, based on the merit of the grant application submitted, as judged by peer reviewers or evaluators. The bill does not prohibit an agency from choosing not to follow the rankings of applications in awarding a particular grant; it only requires that the agency explain and post the rationale for such decisions.

The bill also adds transparency to the close-out phase of the grant process. Upon completion of the grant, the agency must post any final reports that were required to be submitted by the grantee under the grant. Such information can be useful in determining whether a grant accomplished the purpose intended.

The GRANT Act requires each agency to post on its website a grant solicitation forecast identifying potential grant opportunities it expects to be available in the upcoming year. The Committee believes that comprehensive grants transparency should include some form of predictive information about future planning for grants. Aside from listing specific upcoming competitions and deadlines, agencies should disclose any broad goals and objectives they intend to pursue as part of their grantee selection process. This requirement is intended to provide greater opportunities for smaller organizations to compete for projects by giving them advance notice and time to prepare. This opportunity for increased competition should result in greater innovation and better outcomes for agency grant programs. The Committee recognizes that the budget and appropriations process may limit the ability of agencies to definitively identify future grant opportunities. Accordingly, the forecast is not

binding on agencies but should be based on the best information available.

The GRANT Act includes two other measures to improve the discretionary grant-making process and to promote transparency. First, it requires agencies to evaluate potential grantees to ensure they have the necessary financial systems in place and are capable of performing the grant. This requirement will help agencies avoid problems that have occurred when organizations ill-equipped to carry out a project use funds for unallowable purposes or are unable to successfully carry out the grant. Second, the bill promotes transparency and open decision-making by providing disappointed applicants for grants valued at more than $100,000 with an opportunity for a debriefing, in which the agency will explain why, e.g., an applicant was not funded, or not funded at the level sought.

The GRANT Act contains several reporting requirements covering all types of grants. First, the bill directs the Office of Management and Budget (OMB) to report on a government-wide basis the amount of undisbursed grant funds in grant accounts that is expired, and thus no longer eligible to be used to carry out the grant. Second, the bill directs the Government Accountability Office (GAO) to report on several aspects of the grant workforce—those individuals who award and monitor Federal grants, and whose performance is so critical to the success of these programs. Finally, the bill contains a provision requiring OMB to submit a plan to Congress for improving the single audit process, a key tool in ensuring grantee accountability. The bill identifies several elements to be addressed and requires the plan be submitted within 6 months of enactment. OMB is then to report on implementation of the plan.

BACKGROUND AND NEED FOR LEGISLATION

For the past two years, the Committee has examined the need to improve the transparency of Federal information, particularly Federal spending data. The Committee's efforts have included seven hearings,[2] the formation of the Congressional Transparency Caucus,[3] and extensive outreach and research by Republican and Democratic Committee staff. The Committee on Oversight and Government Reform was prompted to inquire into waste, fraud and abuse in the grant system due to the unprecedented surge in grant spending that occurred as part of the American Recovery and Reinvestment Act (Recovery Act).[4] The initial inquiry focused primarily upon the deficiencies in the operation of Grants.gov, as well as its operational failures.[5] More recently, the Committee broadened this inquiry to examine grants in a more general manner.

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[2] "Preventing Stimulus Waste and Fraud: Who are the Watchdogs?" March 19, 2009; "Tracking the Money: Preventing Waste, Fraud and Abuse of Recovery Act Funding," July 8, 2009; "Tracking the Money: How Recovery Act Recipients Account for their Use of Stimulus Dollars," Nov. 19, 2009; "The Freedom of Information Act: Crowd-Sourcing Government Oversight," March 17, 2011; "Achieving Transparency and Accountability in Federal Spending," June 14, 2011; "Transparency Through Technology: Evaluating Federal Open-Government Initiatives," March 11, 2011 (Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform); "Improving Oversight and Accountability in Federal Grant Programs," June 23, 2011 (Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform).

[3] *See* Press Release, "Issa, Quigley Announce Bipartisan Transparency Caucus," March 24, 2010.

[4] P.L. 111–5 (Feb. 17, 2009).

[5] *See,* Letter from OGR to Sheila Conley, Deputy Assistant Secretary for Grants, U.S. Department of Health and Human Services (June 15, 2009) (on file with the Committee). Response

SUBCOMMITTEE HEARING

On June 23, 2011, the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform held a hearing to explore the issues surrounding grant transparency, management and oversight. The hearing, *"Improving Oversight and Accountability in Federal Grant Programs,"* comprised two panels; the first panel presented experts from GAO, the Congressional Research Service (CRS), the Department of Justice (DOJ) Office of the Inspector General (OIG), and OMB. The second panel featured Oklahoma Senator Tom Coburn, who discussed the findings from his report regarding grant waste, fraud and abuse at the National Science Foundation (NSF).

In the first panel, Jeanette Franzel, Managing Director of GAO's financial management assurance team, testified that there are weaknesses in the control systems of grants at all points in the grant cycle.[6] Ms. Franzel testified that GAO's audits found that agencies awarded discretionary grants without adequately documenting the grantee selection process. GAO found that in some instances, agencies did not perform pre-award reviews until after the grants had been awarded. GAO found numerous weaknesses in the award process used by agencies, including a lack of documentation explaining the results of grant award decisions and weak internal controls for ensuring that grant applications would be evaluated consistently by peer reviewers.[7] In the post-award stage, she stated that agencies need to improve oversight of grantee activities and management of Federal funds, noting that effective oversight procedures based on internal control standards for monitoring the recipients' use of awarded funds are key to ensuring that waste, fraud, and abuse are not overlooked.[8]

Ms. Franzel also testified that grant closeout procedures represent one of the final opportunities to detect unallowable uses of funds and that attention is needed to address undisbursed balances in Federal grant programs on a government-wide basis.[9] She also testified that many grant programs have significant levels of improper payments.[10] Finally, Ms. Franzel testified that improvements are needed to make single audits a more effective accountability mechanism over Federal grant spending.[11] GAO found, in this regard, that the current Federal oversight structure is not adequate to monitor the efficiency and effectiveness of the single audit process.

The second witness was Cynthia Schnedar, Acting Inspector General of the Department of Justice. Ms. Schnedar told the Subcommittee that the IG had conducted over 60 reviews of various DOJ grant programs and found that in some programs "inaccurate formulas were used in developing the scores and ranks of appli-

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of Richard Turman, Acting Assistant Secretary for Resources and Technology, U.S. Department of Health and Human Services (August 28, 2009) (on file with the Committee).

[6] *See* Jeanette M. Franzel, GAO Managing Director Financial Management and Assurance, *Federal Grants: Improvements Needed in Oversight and Accountability Processes,* Testimony before the House Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, June 23, 2011, at 6–7 [hereinafter GAO Federal Grant Oversight Testimony].

[7] *Id.* at 8.

[8] *Id.* at 9.

[9] *Id.* at 10–11.

[10] *Id.* at 12.

[11] *Id.* at 13.

cants, which resulted in the allocation of grants to 45 entities that should not have received grants, while another 34 entities that should have received grants did not."[12] She also cited examples of inconsistent treatment of applicants and a lack of documentation of award decisions, particularly when applications ranked lower by peer reviews received grants over higher-ranked applications.[13] Also, Ms. Schnedar stated that DOJ needs to improve its procedures to reduce risks of conflict of interest in the grant award process. For example, one audit of one DOJ program revealed at least 23 instances in which peer reviewers signed forms indicating they had no conflict of interest with the grant applications before the peer reviewers even knew who the grant applicants were that they would be reviewing.[14]

The third witness was Natalie Keegan, an analyst with CRS. Ms. Keegan also reported problems with transparency, particularly in the pre-award stage of the competitive grant-making process. She testified that there is a lack of clarity in the evaluation criteria or formulas agencies use to rank applications.[15] Based on a review of GAO and IG reports, she concluded that "[o]versight of Federal agency grants administration is limited by the lack of transparency in the award process."[16] She went on to describe systemic problems with poor screening of peer review panels for conflict of interest and the awarding of grants without documentation.[17]

The final witness on the first panel was Daniel Werfel, Controller of the Office of Federal Financial Management, Office of Management and Budget. He testified that "commensurate with the substantial increase in the volume of grant awards [over the last decade], there has also been an increase in the efforts [to] improve management of grants by making [it] easier for applicants to find and apply for grant opportunities."[18] He stated that today, all Federal agencies are using Grants.gov, and OMB is currently exploring ways to improve the platform.[19] Regarding oversight of grant programs, Mr. Werfel testified that the single audit is the primary tool that Federal agencies use for overseeing their grant programs. He pointed out that under OMB's implementing guidance to the Single Audit Act, more than 40,000 grantees covering over 95 percent of all Federal grant expenditures are audited annually.[20] He stated that the administration remains committed to continuing efforts to improve the grant management process and identification and mitigation of waste, fraud, and abuse and are in the early stages of developing improvements to single audits.[21]

Senator Coburn presented the findings of his recent Senate investigation into waste, fraud and abuse in the grant programs at

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[12] Cynthia A. Schnedar, Acting Inspector General, U.S. Department of Justice, *Testimony before the House Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform,* June 23, 2011, at 4 [hereinafter DOJ Federal Grant Oversight Testimony].

[13] *Id.*

[14] *Id.*

[15] CRS Federal Grant Oversight Testimony, at 2–3.

[16] *Id.* at 4.

[17] *Id.*

[18] Daniel Werfel, Controller, Office of Federal Financial Management, Office of Management and Budget, *Testimony before the House Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform,* June 23, 2011, at 2 [hereinafter OMB Federal Grant Oversight Testimony].

[19] *Id.*

[20] *Id.* at 3.

[21] *Id.* at 7.

the National Science Foundation (NSF). Senator Coburn's report found more than $1.2 billion at the NSF lost to waste, fraud, duplication, and mismanagement and an additional $1.7 billion in undisbursed balances in expired grant accounts.[22]

At the Subcommittee's hearing, the fundamental absence of transparency was a key finding. Chairman Lankford stated in his opening remarks that agencies "don't always disclose discretionary grant criteria, and decisions are not well-documented." Ranking Member Gerry Connolly agreed that there is a need to improve standards and transparency, noting that "applicants cannot look back and see why they won or lost." These statements were supported and echoed by all expert witnesses who offered suggestions in their testimony.[23] "Documenting the basis for final selection decisions concerning which proposals will be funded and which will not is a commonly-acknowledged best practice in the Federal grant-making community."[24]

COMMITTEE RESEARCH AND FINDINGS

Opportunities to reduce risks and vulnerabilities related to Federal grant programs exist throughout the entire life cycle of grants, beginning with the award of the grant and the process leading up to the award. The manner in which grant funds are awarded varies from program to program based on specific authorizing legislation. Because of the variability among grant programs, policy makers have been reluctant to impose a "one-size-fits-all" approach to the awarding of competitive grants,[25] leaving the system without a consistent standard that can be applied on a government-wide basis. The Committee recognizes that reforming the discretionary grant award process must be undertaken in a way that respects the underlying grant programs and the wide array of existing purposes, characteristics, and authorities applicable to those programs. Accordingly, the Committee expects that agencies will be creative and flexible as they adapt their policies and procedures as required under the GRANT Act, while maintaining the integrity of their programs.

Legislation authorizing or requiring competitive grants often gives agencies considerable latitude in choosing how to disburse grant funds to eligible entities. In some cases the agency decision-maker will have virtually unilateral and unchecked discretion to select one applicant over another. While agencies often employ some form of competitive or merit-based procedures in awarding grants, frequently the process is impenetrably opaque. A grant applicant that was not selected may not be told why their proposal

[22] According to NSF's 2010 financial statements, the agency currently has $1.733 billion in "undisbursed balances in expired grant accounts." In addition, past audits indicate that significant numbers of NSF-supported researchers fail to submit final and annual reports. A 2005 audit found that approximately 47 percent of the 151,000 final and annual project reports required in the past 4 years were submitted late or not at all.

[23] *See, e.g.,* DOJ Federal Grant Oversight Testimony, at 3 ("We believe that the Department still needs to make improvements in the following areas: (i) ranking of grant applications; (ii) consistent treatment of applicants; (iii) documentation and justification of award decisions. . . .").

[24] Danny Werfel, OMB Controller, Responses to Questions for the Record, submitted to Rep. Lankford, Chair, Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, Committee on Oversight and Government Reform, July 26, 2011 [hereinafter OMB QFR Response].

[25] For purposes of this report, competitive grants are those grants awarded after selecting a grantee or grantees from among competing applicants.

was not funded or why the agency made the award decision that it did. The decisions are often unexplained and undocumented, making it virtually impossible for the public, an auditor, or an oversight body, to determine whether the Federal grant award was based on merit or other, improper considerations. The result has been a grant process used by agencies to disburse competitive grant funds that lacks the most basic of transparency standards. As a result, agencies are held less accountable as stewards of taxpayer dollars, confidence in the integrity of the grant selection process is diminished, and providing effective and real-time oversight is made almost impossible.

Despite existing processes that are generally not open to public review or scrutiny, where GAO or IGs have probed specific grant award decisions, they frequently uncover vulnerabilities to fraud or abuse. For example, in a recent report, GAO found that HHS's "process for determining which grant applicants will be awarded grants is primarily based on the results of the peer review process," but that the process "has weak internal controls to ensure that applications are evaluated consistently."[26] GAO's review also revealed that "[f]inal funding decision memos used to internally document grant award decisions for 2007 and 2008 did not contain supporting information regarding why applications with high scores were not funded."[27]

Another GAO review looked at the NIH Institute and Center directors' use of priority scores or rankings, which reflect the evaluation of applications' scientific merit by NIH's peer review process.[28] Under the NIH process, the NIH directors were to set a selective pay line which determines the percentile rank an application must have in order to receive funding. The directors are supposed to fund only those applications with priority scores above the fiscal year's pay line. However, GAO found that about 19% of the applications for RO1 grants (NIH's main funding mechanism) that NIH funded had scientific merit scores below the established pay line.[29] GAO determined that this level of discretion exercised by institute and center directors "represent[s] an area of potential risk" because of their "latitude in making these decisions."[30] GAO also found that while NIH policy requires documentation explaining the reason for funding projects that do not receive the highest peer review scores, there is no collection or review of this documentation by the NIH director or any other oversight body. In addition to NIH's lack of oversight, GAO found, "NIH had not established clear policies related to managing conflicts of interest among senior NIH employees who have decision-making responsibilities for NIH's research efforts, which include NIH's extramural research funding."[31]

GAO also found significant problems with Department of Education grant award decisions and found that the Department did

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[26] *Runaway and Homeless Youth Grants: Improvements Needed in the Grant Award Process*, GAO–10–335 (May 2010).

[27] *Id.*

[28] *National Institutes of Health: Completion of Comprehensive Risk Management Program Essential to Effective Oversight,* GAO–09–687 (September 2009).

[29] *Id.*

[30] *Id.*

[31] *Id.*

not follow its own guidance for making grant award selections.[32] Specifically, GAO found:

• In one case "a senior political appointee selectively re-reviewed and rescored particular applicants after the peer review process had been completed. The panel had recommended awarding grants to the top four applicants, based on their scores. The senior official "asked his staff to re-review the fifth- and sixth-ranked competitors. Based on this re-review, the "order of the fifth and sixth ranked grantees was reversed." The official then determined that the agency should award five, not four awards. To fund five grantees, the Department reduced the awards to each of the other grantees by 16 to 40 percent, without taking into consideration whether the reductions would impede the grantee's ability to perform the proposed activities and achieve the intended outcomes.

• In about 98 percent of files GAO reviewed, there was no evidence that program officers checked a grantee's audit history—a key check on an applicant's ability to manage Federal grant funds.

• Approximately 45 percent of the grant files did not contain documentation that the Department of Education screened grant applicants for eligibility.

• Approximately 68 percent of grant files did not contain documentation of a thorough analysis of the applicant's requested budget to determine whether costs were allowable.[33]

In 2010, the Office of the Inspector General (OIG) of the U.S. Department of Justice (DOJ) released a report on the OIG's audit of the Office on Violence Against Women's Recovery Act grant selection process.[34] The DOJ's Office on Violence Against Women (OVW) administers formula, block, and discretionary grant programs dedicated to reducing and prosecuting crimes against women. The OVW received over $380 million each fiscal year from 2006 to 2008. Although the OVW must follow various DOJ and program-level guidelines in making discretionary grants, discretionary grant programs provide the OVW with wide latitude in determining who should receive an award.

The OVW used peer review scores to rank grant applicants. The OIG found the OVW did not maintain award decision documents in order to have "an adequate record of the reasons for selecting the grantees that it did." OIG found "OVW misplaced important award decision documents, including 10 peer review scoring sheets,[35] which should be maintained to substantiate why an applicant did or did not receive recommendations for discretionary awards." Moreover, the OIG found "a weakness in how peer reviewers were screened for conflicts of interest before evaluating and scoring applications."[36] The OIG audit revealed "[i]n at least 23 instances, peer reviewers signed and dated conflict of interest forms

[32] *Discretionary Grants: Further Tightening of Education's Procedures for Making Awards Could Improve Transparency and Accountability,* GAO–06–268 (Feb. 21, 2006).

[33] *Id.*

[34] U.S. Department of Justice, Office of Inspector General, Audit Division, *The Office on Violence Against Women's Recovery Act Grant Selection Process,* Audit Report 10–31 (July 2010), *available at* http://www.justice.gov/oig/reports/OBD/a1031.pdf.

[35] The OIG "audit revealed that in tabulating individual application scores, OVW peer reviewers added points incorrectly." In one program alone, OVW staff incorrectly calculated peer review scores "for at least 39 out of 76 applications." The OIG concluded that these miscalculations negatively affected the chances of proposals from receiving funds.

[36] *Id.*

before the date they were assigned specific applications to review."[37]

Finally, a recent National Academy of Sciences report found systemic problems with the grant award practices of the Department of Justice's National Institute of Justice (NIJ).[38] The report concluded:

> "Improvement is needed in NIJ's internal operations for selecting and managing its programs to bring them in line with the practices of other Federal research agencies. *An overriding theme is the need for greater transparency in processes and decisions*. Planning activities are not well documented, the signaling of research priorities is haphazard, peer-review feedback to applicants is limited, grant award decisions are not in line with announced intentions, and report review is handled inconsistently by different units. Insufficient transparency contributes to the opinions expressed by practitioners and researchers that NIJ decisions are not made on the basis of scientific criteria. From early announcement of award cycles, to greater information on proposal reviews and decisions, to increased availability of data on awards and award completion, NIJ needs to be better understood by the research and practitioner communities."[39] (Emphasis added).

IMPROVEMENTS TO THE SINGLE AUDIT PROCESS

Once grants are awarded, agencies face severe challenges in monitoring grantees and have limited tools available to ensure that funds are properly used. For example, there is widespread agreement that steps should be taken to improve the single audit process, a key accountability mechanism, and more focus should be given to training agency personnel involved with awarding and monitoring grants.

Testimony before the Subcommittee described weaknesses in grant oversight through the existing mechanisms, particularly the Single Audit Act.[40] The Single Audit Act is the primary tool for oversight over Federal grant awards.[41] The Single Audit Act requires States, local governments, and nonprofit organizations expending $500,000 or more in Federal awards in a year to obtain an audit in accordance with the requirements set forth in the act.[42] A single audit consists of: (1) an audit and opinions on the fair presentation of the financial statements and the Schedule of Expenditures of Federal Awards; (2) gaining an understanding of and testing internal control over financial reporting and the entity's compliance with laws, regulations, and contract or grant provisions that have a direct and material effect on certain Federal programs (i.e., the program requirements); and (3) an audit and an opinion on

[37] *Id.* ("our review of 148 conflict of interest forms identified 23 forms that peer reviewers signed and dated before they received their assigned application packets. Therefore, we believe some peer reviewers attested that they were free from conflicts of interest even though they did not yet know the specific applicants and the proposals they were to evaluate.").

[38] "*Strengthening the National Institute of Justice*," National Research Council, The National Academies Press, Washington, DC, (2010).

[39] *Id.* at 7.

[40] *See* GAO Federal Grant Oversight Testimony, at 13.

[41] OMB Federal Grant Oversight Testimony, at p.3.

[42] 31 U.S.C. 7501.

compliance with applicable program requirements for certain Federal programs.[43] Auditors evaluate the grantee's financial statements in order to indentify material non-compliance with the terms of grant agreements or Federal regulations or laws.[44] All audits performed under the act are submitted to the Federal Audit Clearinghouse, available on a public database maintained by the Census Bureau.[45]

GAO and others have identified and reported on significant concerns with the single audit process that diminish its effectiveness as an oversight accountability mechanism.[46] "Specifically, Federal agencies do not systemically use audit findings to identify and understand emerging and persistent issues related to grant programs and grantee use of funds."[47] Furthermore, "time frames of the single audit process do not facilitate the timely identification and correction of the audit findings." GAO has also identified concerns regarding the need for OMB to issue its annual single audit guidance in a timelier manner.

The Committee believes that reforms to single audits are warranted. Accordingly, the GRANT Act directs OMB to prepare a plan to improve the single audit process, including milestones for implementation.

IMPROVEMENTS TO THE GRANT CLOSE-OUT PROCESS

Another key oversight weakness involving grant management involves the volume of undisbursed funding in expired grant accounts. GAO recommended as far back as August 2008 that the Director of OMB instruct executive departments and independent agencies to annually track the amount of undisbursed grant funding remaining in expired grant accounts and report on the status and resolution of such funding in their annual performance plans and Performance and Accountability Reports.[48] OMB reported that it determined that no additional guidance was needed. However, in fiscal year 2010 OMB directed agencies funded under the Commerce, Justice, Science, and related Agencies Appropriations Act to track undisbursed balances in expired grant accounts.[49] Those agencies were required to report this information in the Performance & Accountability Reports or Agency Financial Reports and annual performance plans and budgets.[50] OMB states that it is conducting a holistic review of how Federal agencies manage their grants.[51]

Better tracking of grant accounts maintained in all Federal payments systems could identify the expired grants with undisbursed balances and make funds available for other assistance projects or facilitate the return of these funds to the Treasury. However, dozens of past reports from multiple agencies suggest that undisbursed balance in expired grant accounts are a longstanding challenge and share common grants management problems. For exam-

[43] GAO Federal Grant Oversight Testimony, at 2.
[44] CRS Memo on file with Committee staff.
[45] OMB Federal Grant Oversight Testimony, at 3.
[46] GAO Federal Grant Oversight Testimony, at 13.
[47] GAO, *Single Audit: Opportunities Exist to Improve the Single Audit Process and Oversight*, GAO–09–307R (March 2009).
[48] GAO Federal Grant Oversight Testimony, at 11.
[49] OMB QFR Response, at 5.
[50] *Id.*
[51] *Id.*

ple, as stated, NSF is estimated to have more than $1.7 billion in expired grant accounts. The reports generally attribute the problems to closeouts being a low management priority, inconsistent closeout procedures, poorly timed communications with grantees, or insufficient compliance or enforcement. The GRANT Act addresses this by requiring that OMB instruct Executive agencies to identify the amounts of undisbursed and expired grant funding remaining in grant accounts and report to OMB on the status and resolution of these amounts.

GRANT WORKFORCE

Under the Federal Acquisition Regulation (FAR), agency heads are required "to establish and maintain a procurement career management program and a system for the selection, appointment, and termination of appointment of contracting officers."[52] The selection and appointment of a contracting officer "must be consistent with Office of Federal Procurement Policy's (OFPP) standards for skill-based training in performing contracting and purchasing duties as published in OFPP Policy Letter No. 05–01, Developing and Managing the Acquisition Workforce, April 15, 2005."[53] These requirements ensure that contracting officers possess the necessary skills and expertise to properly represent the government's interests. By comparison, there exist no government-wide training or accreditation standards applicable to Federal personnel involved with awarding or monitoring Federal grants. The bill includes a requirement for a broad report from the Government Accountability Office intended to identify areas where additional focus is needed to improve and support the grant workforce.

LEGISLATIVE HISTORY

The GRANT Act builds on previously enacted legislation that would enhance the transparency of Federal grant spending, particularly the Federal Funding Accountability and Transparency Act of 2006 ("FFATA")[54] and the Federal Financial Assistance Management Improvement Act of 1999 ("FFAMIA").[55] FFATA required the Office of Management and Budget (OMB) to establish a website, USASpending.gov, which publishes selected information, gleaned from government-wide databases, for each Federal grant, loan, and contract. Congress enacted the FFAMIA to improve the effectiveness and performance of Federal grant programs, simplify the grant application process, and reduce the burden on applicants by providing for a central website for finding and applying for Federal grants. The FFAMIA led to increased transparency of the Federal grants process, principally through the creation of a web portal for Federal grant applicants to search and apply for Federal grants.

Last Congress, both the House and the Senate passed bills that would have reauthorized FFAMIA and thereby improved the trans-

[52] FAR 1.603–1, *citing* 41 U.S.C. § 414(4), recodified at 41 U.S.C. § 1702(b)(3)(F).

[53] FAR 1.603–1, *citing* OFPP Policy Letter No. 05–01, *Developing and Managing the Acquisition Workforce*, April 15, 2005 *available at* http://www.whitehouse.gov/omb/procurement_policy_letter_05-01/. ("Not later than January 1, 2006, FAI, in partnership with DAU, shall develop a certification program that considers a variety of means, including a fulfillment process, for assessing and certifying that the education, training, and experience requirements for the GS–1102 series, as described herein, have been met.").

[54] Pub. L. No. 109–292.

[55] Pub. L. No. 106–107 (31 U.S.C. § 6101 note).

parency and usefulness of data on the website related to grants.[56] The Senate Homeland Security and Governmental Affairs Committee reported that, "although FFAMIA required the development of a common system, including electronic processes, through which a grantee could apply for, manage, and report on the use of funding, systems for any grant phase beyond the application phase had not been developed."[57] The Committee report pointed out that in his responses to questions for the record following his January 14, 2009, confirmation hearing before the Senate Homeland Security and Governmental Affairs Committee, OMB Director Peter Orszag indicated his support for efforts to streamline grant administration, stating, "I believe that improving grants management should be a priority, and that we should work toward simplifying the process and creating more integrity and transparency in the grant-making process. The enactment of [FFATA] was a critical step toward greater transparency of grant awards, but significant work remains in carrying out the full vision of this law."[58] The House and Senate versions of the FFAMIA reauthorization bills were, however, never reconciled.

H.R. 2146, the House-passed DATA Act, would build upon and strengthen FFATA and improve the quality of Federal spending data. DATA provides improved Federal reporting and transparency for all types of Federal spending, including grants. The GRANT Act complements the DATA Act, and provides for unprecedented transparency throughout the grant life cycle. The Committee expects that the website used to implement the GRANT Act will be compatible and merged or linked with the website required under the DATA Act.

Representative James Lankford, Chairman of the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, introduced the GRANT Act on November 16, 2011. The bill was amended during a Committee business meeting on November 17, 2011. After amending the legislation, the Committee favorably reported it by voice vote.

SECTION-BY-SECTION

Section 1. Short title

This section states that the Act may be cited as the "Grant Reform and New Transparency Act of 2011," or the "GRANT Act."

Section 2. Table of contents

This section lists the table of contents.

Section 3. Grants transparency requirements

This section adds a new Chapter 74 to Subtitle 5 of title 31, U.S. Code, beginning with:

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[56] S. 303 was passed by the Senate on March 17. The House passed S. 303 on December 14, 2009.

[57] S. Rept. 111–7, March 11, 2009.

[58] *Id.* at 4, citing Additional Questions for the Record following the Nomination Hearing for Peter Orszag, submitted by Senator George V. Voinovich, January 14, 2009.

Chapter 74—Grants Transparency Requirements

Section 7401. Definitions. Defines the terms "grant," "competitive grant," "executive agency," "board," "proposal abstract," and "grant reviewer."

Section 7402. Merit-based selection procedure requirements in awarding grants.

Requires agencies to establish merit-based selection procedures for discretionary grant programs of the agency. Requires merit-based selection procedures to include advance notification of the grant opportunity; a clear statement of the purposes and eligibility requirements; and disclosure of the evaluation criteria.

Section 7403. Pre-award evaluation requirements. Requires Executive agencies to conduct an evaluation of the ability of the applicant to successfully perform a grant. Specifies those factors and considerations to be taken into account in making this determination.

Section 7404. Website relating to Federal grants. Requires OMB to upgrade an existing website or establish a public website for finding Federal grant opportunities and applying for grants so that such website may serve as a central point of information for competitive grants. Requires that any such website post the announcement and purpose for the: grant; grant period; amount of funds available; eligibility; agency point of contact; evaluation factors or criteria; process and standards for safeguarding against conflicts; and application deadline. As part of the requirement to disclose the grant period, agencies should indicate whether the grant will be continued, that is, whether the announced grant will be one in a series of grants expected to be awarded annually for some period of time. Specifies that any such website should be accessible with any computer platform; provide for searchability by type, purpose, funding agency, program source and other relevant criteria; manage, track and report the use of competitive grants and provide all required certifications and assurances for a competitive grant. Requires the publication of grant award information, including a copy of the executed grant agreement; proposal, application or plan; award decision recommendation and rankings; justification for deviating from rankings; disclosure of information related to the pool of peer reviewers; and disclosure of other grant reviewers. Provides an exception to requirement to post the successful proposal under limited circumstances. Requires that the final report or other written product be posted. Calls for the submission and publication of grant solicitation forecasts on the grants website. The forecast shall state the subject and purpose of the grant; the point of contact; the notice of publication date and the estimated award amount. Provides that need not post information that would otherwise be exempt from the Freedom of Information Act. Requires that the website post the required information in a user-friendly, searchable and downloadable format.

Section 7405. Debriefing. Provides that, if requested, for a grant over $100,000, the agency shall provide the applicant a timely debriefing explaining the basis for the agency's decision. The Committee intends that this debriefing afford the applicant an opportunity to ask questions about the selection process.

Requires OMB to issue guidance to agencies for establishing merit-based selection procedures no later than 60 days after the date of enactment. Requires each agency to establish merit-based selection procedures no later than 180 days after the date of enactment. Requires the Comptroller General to submit a report 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 describing the actions taken by Executive agencies to establish competitive procedures no later than 1 year after enactment.

Section 4: Report requirements relating to grants

This section requires the Director of the Office of Management and Budget to issue guidance, no later than 90 days after enactment of the Act, to Executive agencies instructing each agency to identify amounts of undisbursed grant funding remaining in expired accounts.

Further requires the Director to report 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 on the status and resolution of such funding no later than 180 days after enactment.

This section also requires the Comptroller General of the United States to 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 no later than 180 days after enactment. The report shall address such issues as the size of the Federal grants workforce and expected trends in Federal employment; adequacy of training opportunities for the Federal grants workforce; whether the Federal Acquisition Institute or any other existing entity engaged in acquisition workforce training should be made available for grant training; whether a warrant system similar to that used in the Federal acquisition system should be established for Federal officials authorized to award grants; the use by executive agencies of suspension and debarment actions against grantees; and any recommendations for improving the Federal grants workforce. Defines the terms "Executive agency" and "Federal grants workforce."

Section 5: Plan for improving the single audit process

Requires the Director of the Office of Management and Budget to 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 to improve the single audit process. The plan is to include a proposed centralized Federal oversight structure for the single audit structure, simplified single audit requirements for smaller Federal awards, and a proposal to shorten the single audit cycle. The plan must identify necessary legislative changes and include key milestones.

Requires the Director of the Office of Management and Budget to report on the implementation of each element of the plan not later than 180 days after submission of the plan.

EXPLANATION OF AMENDMENTS

Mr. Cummings offered an amendment to strike the requirement in section 3 of the bill in section 7404 that the name, title, and employer of peer reviewers who have served as peer reviewers in the previous six months. Chairman Lankford offered a second degree amendment, striking "name, title, and employer" in that provision and replacing it with "employer and, either the name and title, or a unique identifier." The second degree amendment was agreed to by voice vote.

COMMITTEE CONSIDERATION

On November 17, 2011, the Committee met in open session and ordered reported favorably the bill, H.R. 3433, 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 requires greater accountability in grantees' use of grant funds; addresses the agency close-out process following completion of the grant; and directs attention to the need for a highly trained workforce to effectively award and administer Federal grant funds. 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

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

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 Mandates 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. 3433 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. 3433. 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. 3433 from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 28, 2012.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3433, the Grant Reform and New Transparency Act of 2011.

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

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 3433—Grant Reform and New Transparency Act of 2011

H.R. 3433 would amend federal law pertaining to the awarding of federal grants. The legislation would require that federal agencies use merit-based award procedures in awarding grants, unless those grants are block grants, formula grants, or they are awarded according to some other standard required by statute. The bill also would require additional reports.

CBO estimates that implementing changes to the grant-award system as required under H.R. 3433 would cost less than $1 million annually over the 2012–2017 period, assuming the availability of appropriated funds. Those costs would result primarily from preparing reports and making the required changes to agency Web

sites. The bill also could affect direct spending by agencies not funded through annual appropriations, such as the Tennessee Valley Authority and Bonneville Power Administration; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting H.R. 3433 would not affect revenues.

Under current law, the agencies that award the most grants provide them primarily as formula or block grants or use merit-based procedures. Most of the provisions of H.R. 3433 would continue those current practices. Based on information from some of the largest grant-awarding agencies, CBO estimates that implementing the bill would lead to a small increase in administrative costs to oversee some award changes and to prepare additional reports.

H.R. 3433 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 Jonathan Morancy. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

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SUBTITLE V—GENERAL ASSISTANCE ADMINISTRATION

Chap.		Sec.
61.	**Program Information**	**6101**
	* * * * * * *	
74.	***Grant Transparency Requirements***	***7401***
	* * * * * * *	

CHAPTER 74—GRANTS TRANSPARENCY REQUIREMENTS

Sec.
7401. Definitions.
7402. Merit-based selection procedure 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 applicants, 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 section 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 justification explaining the rationale for the decision not to follow the rankings or recommendations.

(E) DISCLOSURE OF PEER REVIEWERS.—The employer, and either the name and title or a unique identifier, 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.

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MINORITY VIEWS

H.R. 3433, the Grant Reform and New Transparency Act of 2011, would increase transparency in the competitive grant selection process and would make several other positive changes to current law. For example, the bill would require agencies to post on a single website key information about grants they award, including grant agreements, the criteria used to guide the selection of grant recipients, and the numerical rankings assigned to grant applications. The bill would also enable grant applicants to request a debriefing from an agency if their applications are not chosen to receive funding.

Colleges and universities—which comprise a significant portion of the grant recipient community—have expressed concern that posting their grant applications online could provide competitors access to their proprietary information. Although Rep. Connolly introduced an amendment that would have allowed organizations to post grant abstracts instead of full grant applications, the amendment was not adopted.

In addition, numerous organizations have written letters expressing their desire to protect the anonymity of peer reviewers. Although Rep. Murphy introduced an amendment to strike the provision requiring the disclosure of peer reviewers, the amendment also was not adopted.

Finally, some Members expressed concerns about the amount of paperwork this bill would require for agencies and organizations. In order to protect intellectual property, these entities would be required to perform extensive redactions to every grant application. Estimates suggest that the National Science Foundation, for example, would be required to post more than 150,000 pages of documents. At a time when federal agency and university funding is declining significantly, it would not seem prudent to impose such a labor-intensive requirement.

The majority indicated that they would work with the minority to rectify these concerns.

ELIJAH E. CUMMINGS.

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