

Calendar No. 723

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-407

GRANT REFORM AND NEW TRANSPARENCY
ACT OF 2016

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2972

TO AMEND TITLE 31, UNITED STATES CODE, TO PROVIDE
TRANSPARENCY AND REQUIRE CERTAIN STANDARDS IN THE
AWARD OF FEDERAL GRANTS, AND FOR OTHER PURPOSES



DECEMBER 20, 2016.—Ordered to be printed
Filed, under authority of the order of the Senate of December 10
(legislative day, December 9), 2016

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114th Congress } SENATE { REPORT
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Mr. JOHNSON, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2972]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2972) 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, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 2972, the Grant Reform and New Transparency Act of 2016 or GRANT Act, seeks to improve the Federal competitive grant process by increasing transparency and providing further assistance to competitive grant applicants. Specifically, the bill strives to ensure a more open grant process by requiring the Office of Management and Budget (OMB) to post all Federal competitive grant opportunities on one central website, where information on eligi-

bility requirements, evaluation factors, and anticipated timetables of award dates, among other relevant information, can be accessed.

The bill also gives several tools to applicants who are not awarded competitive grants to improve their future applications, including the posting of sample winning grant proposals on the central grant website, and the opportunity for those who are not awarded a grant to request an explanation from the awarding agency. Finally, the bill aims to reduce waste, fraud, and duplication in competitive grants by codifying current regulations requiring that, before awarding competitive grants, agencies review the ability of grant applicants to carry out grants, including their past grant performance and ability to comply with financial reporting standards. The bill also requires, to the extent practicable, an interagency search for duplication in research grants.

II. BACKGROUND AND THE NEED FOR LEGISLATION

The Federal Government awarded more than \$600 billion in total grants in each of the last three years.¹ While the purpose and recipients of Federal grants are diverse, transparency and accountability is needed in the grants process.

This Congress, the Committee has been conducting oversight and implementing reforms of Federal grants processes. Senators James Lankford, Ron Johnson, Tom Carper, and Kirsten Gillibrand requested that the Government Accountability Office (GAO) study the progress made by the Council on Financial Assistance Reform (COFAR) in implementing their priority goals along with actions that agencies are taking to implement the merit-based review processes for grants required under regulations titled the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200), also known as the “Super Circular”.² Further, on November 30, 2015, the Committee approved the Grants Oversight and New Efficiency Act (S. 1115) that seeks to identify and close out expired grants. S. 1115 was signed into law on January 28, 2016.³

The GRANT Act follows on this work and the findings of seven oversight hearings held in the U.S. House of Representatives between 2009 and 2011 that examined the grant life cycle for areas of waste, fraud, and abuse.⁴ The hearings, convened before the publication of the Super Circular, found that there are opportunities to strengthen the award-making processes at various stages,

¹USASpending.gov, *Overview of Awards by Fiscal Year*, available at <https://www.usaspending.gov/transparency/Pages/OverviewOfAwards.aspx>.

²Letter from Sens. Lankford, Johnson, Carper, and Gillibrand, to the Government Accountability Office (Jul. 15, 2015) (on file with Comm. staff).

³Pub. L. No. 114–117.

⁴*Preventing Stimulus Waste and Fraud: Who are the Watchdogs?: Hearing Before the Oversight and Gov’t Reform Comm., 111th Cong. (2009); Tracking the Money: Preventing Waste, Fraud and Abuse of Recovery Act Funding: Hearing Before the Oversight and Gov’t Reform Comm., 111th Cong. (2009); Tracking the Money: How Recovery Act Recipients Account for their Use of Stimulus Dollars: Hearing Before the Oversight and Gov’t Reform Comm., 111th Cong. (2009); The Freedom of Information Act: Crowd-Sourcing Government Oversight: Hearing Before the Oversight and Gov’t Reform Comm., 111th Cong. (2009); Achieving Transparency and Accountability in Federal Spending: Hearing Before the Oversight and Gov’t Reform Comm., 112th Cong. (2011); Transparency Through Technology: Evaluating Federal Open-Government Initiatives: Hearing Before the Oversight and Gov’t Reform Comm. Subcomm. on Technology Information Policy, Intergovernmental Relations and Procurement Reform, 112th Cong. (2011); Improving Oversight and Accountability in Federal Grant Programs: Hearing Before the Oversight and Gov’t Reform Comm. Subcomm. on Technology Information Policy, Intergovernmental Relations and Procurement Reform, 112th Cong. (2011).*

including pre-award vetting, notice of funding opportunities, agency decision making, and post-decision feedback for applicants. The bill aims to combine some of these suggested improvements with the goals of providing clear, consistent, and beneficial information for grant applicants while addressing the potential for waste, fraud, and abuse.

Pre-award evaluation requirements

On December 26, 2013, the OMB and the COFAR issued the Super Circular, which updated, consolidated, and streamlined eight existing guidance documents that outline the use, administration, and audit processes for Federal award disbursements.⁵ One critical component included in the Super Circular is the pre-evaluation protocols that each agency must follow in the grant award-making process. These requirements are meant to provide agencies with a number of factors that can be used to evaluate applicants, such as a grant applicant's financial management capabilities, internal controls, financial performance history, reports and findings from any past audits, and whether the applicant has received Federal funds from other sources, before distributing funds to grant recipients.⁶ The bill codifies the pre-evaluation criteria established in the Super Circular to convey Congressional support for the process and to further the implementation of these practices by Federal grant-making agencies.

In a 2006 report on discretionary grants awarded by the Department of Education (DOE), the GAO examined a selection of grant awards from 2003 and 2004. During this inquiry, the GAO found that in about 98 percent of files GAO reviewed for these grants, there was no evidence that program officers checked a grantee's audit history—a key check, the agency claimed, on an applicant's ability to manage Federal grant funds.⁷ The same report found approximately 45 percent of the grant files did not contain documentation that the DOE screened grant applicants for eligibility, though program officials asserted that such screenings do occur.

The bill's codification of the pre-evaluation criteria set forth in the Super Circular (2 CFR 200.205) is not intended to create new burdens or reporting requirements on applicants or agencies that are already in compliance with the current protocols. Moreover, the bill would establish simplified procedures that allow agencies to ease the application and vetting process for frequent grant applicants or applicants deemed by Federal agencies to be a low risk for mismanaging funds.

The bill also includes a new requirement for research grants during the pre-award process, under which agencies would, to the extent practicable, review grant applicants for any interagency duplication of efforts. These screenings may utilize text-similarity searches. In 2013, Nature Magazine published an article suggesting that between \$70 million and \$200 million in Federal funds

⁵ OFFICE OF MANAGEMENT AND BUDGET, 78 FR 78589, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS, available at <https://www.federalregister.gov/articles/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards>.

⁶ *Id.* at 200.205.

⁷ GOV'T ACCOUNTABILITY OFFICE, GAO-06-268, DISCRETIONARY GRANTS: FURTHER TIGHTENING OF EDUCATION'S PROCEDURES FOR MAKING AWARDS COULD IMPROVE TRANSPARENCY AND ACCOUNTABILITY (2006), available at <http://www.gao.gov/new.items/d06268.pdf>.

may have been awarded to projects that were already receiving funding from other grant programs.⁸ The report utilized text-similarity detection software developed by one of the authors to discover potential duplication and overlap in winning grant proposals among grant programs at multiple agencies. Though the review could not definitively identify all duplication due to Freedom of Information Act restrictions, nor whether agencies had discovered the potential duplication and made appropriate adjustments, the authors recommended that funding agencies curb duplicate funding by using text-similarity software to identify proposals which need closer scrutiny.

Multiple grants in the same field or topic is a common and necessary occurrence. However, with multiple agencies awarding grants to similar fields, it could be helpful for Federal agencies to maintain awareness of other ongoing Federal efforts so that unnecessary duplication or fragmentation does not occur, provided that such an endeavor does not negatively impact the grant programs in question. It is the Committee's intent that this review should not discourage awarding grants to proposals similar to existing research, particularly repeat studies, which are necessary to confirm research findings, but rather to make agencies aware of potential duplicative efforts within other grant programs, particularly multiple proposals or grant applications from the same applicant.

Accessibility of information by potential grantees

One of the primary goals of the GRANT Act is to help provide the information and tools necessary for any applicant to submit a successful grant application. To this end, the bill requires each agency to make information available about the award process for discretionary, competitive grants while ensuring applicants have greater opportunities and more information about the decision-making process. This includes each agency posting basic information about each grant opportunity on grants.gov, including the factors that will be used to evaluate proposals—as required by the Super Circular—while encouraging the use of grants.gov as a one-stop shop to apply for grants. Agencies may offer additional alternative methods for applicants to submit applications, proposals, and other relevant documents, should the applicant prefer alternative methods, but it is the Committee's intent that agencies must at least offer the grants.gov application option. The bill also requires agencies to post a sample of winning grant proposals so that potential applicants without the resources to hire a professional grant writer can examine the substance of a successful application.

Transparency in the decision-making process

Decisions made by grant officers and peer review panels determine the recipients of billions of dollars in taxpayer dollars. This is a significant responsibility that necessitates strong oversight and accountability. The bill requires additional information on the decision-making process for Federal grants, requiring agencies to post

⁸Harold R. Garner, Lauren J. McIver and Michael B. Waitzkin, *Same Work, twice the Money?*, Vol. 493, Nature Magazine (Jan. 31, 2013), available at http://www.nature.com/articles/493599a.epdf?referrer_access_token=WmGmBM7Ei-fZ7hTVH2YctRgN0jAjWel9jnR3ZoTv0Nsapw4DXe_u-tPWvCB0XaT03gVgCt1tTDQLWmIDfiEi717k58Y_3xuj7TWlwuc2dlzVYNugDYYUAujXzjblawyV_IYpQknVDHtFLPRImE3VJYsQ-qd-UzCcQaiMX396XQ%3D&tracking_referrer=www.nature.com.

the number of applicants, the criteria used, and whether they used numerical rankings or other recommendations from peer reviewers. The provision requires an agency to post a written explanation for grant award decisions that were not consistent with the numerical rankings or recommendations from the peer review board.

There have been several cases discovered by the GAO or Offices of Inspectors General (OIGs) that found grants have been awarded in problematic circumstances. In a 2010 review of the Department of Health and Human Service (HHS)'s runaway and homeless youth grants, the GAO noted 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."⁹ Though the GAO did recognize that "the agency is permitted to use its discretion to deny grants based on other reasons," the report concluded that "[w]ithout fully documenting and permanently recording its rationale for exercising its discretion to deny grants to highly scored applicants, the agency decision-making process is not transparent." Similarly, a 2009 GAO report found that in Fiscal Year 2007, Institute and Center (IC) directors from the National Institute of Health (NIH) selected about 19 percent of the applications for Research Project Grants Programs that year that had scientific merit scores below the established scoring percentile for the program, due to other evaluation factors.¹⁰ The GAO noted that "IC directors have discretion when making final extramural decisions and are not required to fund applications based strictly on the scores resulting from the evaluation of their scientific merit," and that "ICs are required under NIH policy to document the corresponding rationale used" when taking outside factors into account. However, the report also 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," and that the documentation for these decisions are not required to be submitted to or collected by the NIH's Office of the Director.¹¹

In 2010, the 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 (OVW) Recovery Act grant selection process.¹² The DOJ's OVW used peer review scores to rank grant applicants. However, the OIG found a number of issues with the peer review scoring system at OVW, including a number of troubling incidents where the peer rankings were miscalculated, potentially depriving qualified applicants from receiving funds. The report also noted that at times the program omitted information from or misplaced important award decision documents. The OIG recommended that the of-

⁹ Gov't Accountability Office, GAO-10-335, RUNAWAY AND HOMELESS YOUTH GRANTS: IMPROVEMENTS NEEDED IN THE GRANT AWARD PROCESS (2010), available at <http://www.gao.gov/assets/310/304262.pdf>.

¹⁰ Gov't Accountability Office, GAO-09-687, NATIONAL INSTITUTES OF HEALTH: COMPLETION OF COMPREHENSIVE RISK MANAGEMENT PROGRAM ESSENTIAL TO EFFECTIVE OVERSIGHT (2009), available at <http://www.gao.gov/assets/300/295085.pdf>.

¹¹ *Id.*

¹² 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>.

fice improve how it maintains these documents to have “an adequate record of the reasons for selecting the grantees that it did.”¹³

There are many legitimate reasons to award grants in a manner that is inconsistent with the numerical rankings, such as the need for geographic diversity or ensuring that the dispersal of research funding is balanced across fields and disciplines. The bill should not impact the ability for agencies to award grants in a manner that is inconsistent with their rankings. Transparency into the decision-making process through a written justification for any reordering will provide for enhanced accountability in the award process and prevent similar situations to those outlined above.

Post-decision explanation for applicants

In addition to requiring that agencies post written technical assistance with grant opportunities, the GRANT Act requires that agencies provide certain grant applicants with a direct interaction describing the basis for the award decision. Any applicant for a grant award in an amount larger than \$100,000 may request a direct interaction from the agency describing the basis for the award decision. This provision is intended to support grant applicants in the application process by providing appropriate feedback and assistance to applicants who may be unable to hire specialized grant writers. It will guarantee that an unsuccessful applicant can seek a minimum level of feedback if and when they are applying for a higher-value award.

Conflicts of interest review

To have a fair and objective grant-making process, integrity in the decisions to award grants is of the utmost importance. There have been circumstances in the past where agencies have been determined to have practiced lax conflicts of interest policies. In a 2007 report, the GAO found that while “NIH has undertaken a number of activities to improve its policies and processes related to conflicts of interest,” the NIH had not established clear recusal policies for managing conflicts of interest among senior NIH employees who have decision-making responsibilities for the NIH’s research efforts.¹⁴ In an investigation into OVW grants, the OIG found “a weakness in how peer reviewers were screened for conflicts of interest before evaluating and scoring applications.”¹⁵ The OIG audit revealed that “[i]n at least 23 instances, peer reviewers signed and dated conflict of interest forms before the date they were assigned specific applications to review,” though the OIG did not identify any specific instances of conflicts of interest.¹⁶

Any conflicts of interest that may exist either in the peer review process or within the grant-awarding agency are corruptive and could favor certain groups of applicants at the cost of others. 2 CFR 200.112 of the Super Circular requires Federal agencies to establish conflict of interest policies for grant awards. However, to en-

¹³*Id.*

¹⁴GOV’T ACCOUNTABILITY OFFICE, GAO-07-319, NIH CONFLICT OF INTEREST: RECUSAL POLICIES FOR SENIOR EMPLOYEES NEED CLARIFICATION (2007), available at <http://www.gao.gov/assets/270/260235.pdf>.

¹⁵U.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>.

¹⁶*Id.*

sure that agencies publish and comply with rigorous conflicts of interest policies, the bill requires that each grant award-making agency's respective OIG perform a review of that agency's conflicts of interest policy.

III. LEGISLATIVE HISTORY

S. 2972, the Grant Reform and New Transparency Act of 2016, was introduced May 23, 2016, by Senator James Lankford. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 2972 at a business meeting on May 25, 2016. A modified substitute amendment was offered by Senator Lankford that requires that agencies post a set of sample winning grant proposals awarded under the same or similar program within the last three years, rather than all winning grant proposals. The amendment also conformed the pre-award evaluation provision to align it with the existing processes established by 2 CFR 200.205, rather than add duplicative evaluations, and simplifies pre-award evaluation procedures for grantees deemed to be "low-risk" by agencies. No other amendments were offered.

The Committee adopted the Lankford modified substitute amendment, and ordered the bill, as amended, be reported favorably by roll call vote with 12 yeas to 2 nays. Senators voting in the affirmative were Senators Johnson, Portman, Paul, Lankford, Ayotte, Ernst, Sasse, Carper, McCaskill, Tester, Heitkamp, and Peters. For the record only, Senators McCain and Enzi voted yes by proxy. The Senators voting in the negative were Senators Baldwin and Booker.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the short title of the bill as the "Grant Reform and New Transparency Act of 2016" or the "GRANT Act".

Section 2. Grants transparency requirements

Amends Subtitle V of title 31, U.S.C., by inserting a new chapter adding transparency requirements for competitive grants. The new chapter 74 contains five sections.

Sec. 7401 provides definitions for several terms to be used in chapter 74, including "applicant," "competitive grant," "executive agency," "grant," and "grant reviewer." Most significantly, because the legislation improves transparency measures for only "competitive grants," this section defines the term to mean discretionary grants awarded by Executive agencies using merit-based selection procedures.

Sec. 7402 requires that certain risk evaluations be performed by an agency prior to awarding a competitive grant. First, this section requires Executive agencies to conduct an evaluation of the risk posed by an applicant to successfully carry out the grant in accordance with 2 CFR 200.205, also known as the Super Circular, or any successor. The Super Circular requires that agencies evaluate grant applicants for risks posed by a number of factors, which could include financial stability, quality of management systems, ability to perform grant functions, ability to adhere to Federal laws

and regulations, and past performance history, including the results of previous audits.

In addition to the risk factors in the Super Circular, Sec. 7402 directs agencies to review research grants to identify any inter-agency duplication of effort, which may be completed through a text-similarity detection process. The bill directs that this be done to the greatest extent practicable.

This section also directs agencies to identify applicants which pose a relatively low risk of failing to execute the grant successfully and properly, to minimize the burden on those applicants and use any existing findings for the applicant under the single audit process described in chapter 75 of title 31, U.S.C.

Subsections 7403 (a) and (b) require that the Director of OMB maintain one public website, grants.gov or its successor, which allows users to find and apply to all Federal competitive grant opportunities. For each competitive grant opportunity announced by an Executive agency, the agency will be required to post specific information about the grant opportunity in a searchable format. Information required to be posted includes the announcement and purpose of the grant, the anticipated period of performance and whether the agency anticipates continuing the grant, the amount of funds available for the grant (if a specific sum is reserved), a statement of eligibility requirements of the grant, and a point of contact at the agency for questions. Also required is a clear statement of evaluation factors or criteria that the Executive agency intends to use for evaluation, a description of the process and standards to be used by the Executive agency to determine that each grant reviewer does not have a prohibited conflict of interest with respect to the evaluation of the grant application, the anticipated deadline for grant application submissions, and a set of sample winning grant proposals awarded by the same or similar program within the last three years.

Subsection 7403(c) requires, to the greatest extent practicable, that the grants website allow applicants to use the website with any widely-used computer platform and to search the website for all competitive grants by certain criteria, including purpose, funding agency, and program source. The website must also allow applicants to apply for competitive grants using the website where practicable.

Subsection 7403(d) provides that each agency shall make detailed grant guidance and written technical assistance available to grant applicant on the grants website. For each grant awarded, within 30 days after the date on which the grant is awarded, each agency must post on the grants website an explanation for the basis of the selection decisions for the grant, and the number of proposals received for the grant. The agency must also post whether or not winning grant applications or proposals were awarded consistent with a numerical ranking or other recommendations by grant reviewers. In any case in which the award of the grant is not consistent with numerical rankings or other recommendations made by grant reviewers, the agency must post written justification explaining the rationale for making such a decision.

Subsection 7403(d) also allows agencies to redact personally-identifiable information from any posts on the grants website as required by this section. Additionally, agencies may not post any sen-

sitive information on the grants website which the Executive agency determines would adversely affect an applicant.

Subsection 7403(e) requires that agencies publish a forecast of all nonemergency grant solicitations that an agency expects to issue for the following calendar year. This forecast is to be published not later than November 30 of each year, or not later than 60 days after the Executive agency is appropriated funds for the fiscal year, whichever is later, and is nonbinding on the agency, though it is required to be based on the best information available. The forecast is required to include for each grant, to the extent practicable, a brief description of the subject and purpose, a point of contact, and the expected or actual dates for issuing the grant solicitation, application and submission deadline. The forecast is to also contain estimations of the amount of the average grant award, the maximum and minimum amounts of each award (if applicable) and the total number of grant awards to be made, as well as a description of the total amount available to be awarded.

Subsection 7403(f) clarifies that nothing in section 7403 shall be interpreted as requiring information which would be exempted from disclosure according to the Freedom of Information Acts (FOIA) (5 U.S.C. 552) to be posted on the grants website. However, the exemption in 5 U.S.C. 552(b)(5), which exempts inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency from FOIA requests, does not apply to pre-decisional documents required to be posted under this section to explain the basis for grant selection decisions and to justify decisions that do not follow the rankings or recommendations of grant reviewers.

Subsection 7403(g) states that the grants website, to the extent practicable, should make all information required by section 7403 available in its original format and without charging a fee or requiring a license or registration. The grants website must also: allow the information to be searched, downloaded in bulk, disseminated via automatic electronic means, and freely shared by the public, such as by social media; use permanent uniform resource locators for the required information; and provide an opportunity for the public to provide input about the usefulness of the site and to make recommendations for improvement.

Section 7404 states that, if requested by an applicant for a competitive grant, for each grant award made by an agency in an amount larger than \$100,000, the agency must provide the applicant for the grant with a direct interaction describing the basis for the award decision of the agency. This interaction should be timely and should include, if applicable, the basis for the decision not to award a grant to the applicant.

Section 7405 requires that no later than 18 months after the date of enactment, the Inspector General of each Executive agency that awards competitive grants will conduct a review of the effectiveness of the conflict of interest policy of the agency. This should include a review of a random selection of peer review processes for competitive grants to detect favoritism within the peer review process.

Section 2(b) of the bill is a clerical amendment to reflect the new chapter 74 of title 31, United States Code.

Section 3. Grants Workforce Report

This section provides definitions for the terms “Executive Agency” and “Federal Grants Workforce” for the purposes of this section. The section also requires the GAO to issue a report to relevant Congressional committees, not later 180 days after the date of enactment, examining the Federal grants workforce. This report should address the size of the Federal grants workforce and expected employment trends, the adequacy of training opportunities for the workforce, whether the Federal Acquisition Institute or similar entities engaged in acquisition workforce training should be made available for grant workforce training, and whether a warrant system similar to the Federal acquisition system should be established for Federal officials authorized to award grants. The report should also examine suspension and debarment actions taken against grantees by agencies during the preceding three year period, and the level of agency resources assigned to the suspension and debarment functions. Finally, the report should make any necessary recommendations for improving the Federal grants workforce.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

DECEMBER 7, 2016.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2972, the Grant Reform and New Transparency Act of 2016.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 2972—Grant Reform and New Transparency Act of 2016

S. 2972 would amend federal law pertaining to awards of grants across federal agencies. The legislation would require agencies to conduct additional evaluation of applicants for merit-based grants, to upgrade federal websites related to grants, and to prepare additional reports.

S. 2972 would largely codify existing practices for merit-based grants. CBO estimates that implementing changes to the grant-

award system as required under S. 2972 would cost less than \$1 million annually over the 2017–2021 period, subject to the availability of appropriated funds.

Enacting the bill also could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures would apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting S. 2972 would not affect revenues.

S. 2972 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 Lara Robillard. The estimate was approved by Holly Harvey, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2972 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 31—MONEY AND FINANCE

* * * * *

Subtitle V—General Assistance Administration

* * * * *

CHAPTER 74—GRANTS TRANSPARENCY REQUIREMENTS

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CHAPTER 74—GRANTS TRANSPARENCY REQUIREMENTS

Sec.

7401. Definitions.

7402. Pre-award evaluation requirements.

7403. Website relating to Federal grants.

7404. Postdecision explanation for failed applicants.

7405. Inspector General review of peer review process.

SEC. 7401. DEFINITIONS

In this chapter:

(1) *APPLICANT.*—The term ‘applicant’ means an entity that submits a proposal or application for a grant.

(2) *COMPETITIVE GRANT.*—The term ‘competitive grant’ means a discretionary 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 given the term in section 105 of title 5, except the term does not include the Government Accountability Office.

(4) *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.

(5) *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 an 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.

SEC. 7402. PRE-AWARD EVALUATION REQUIREMENTS

(a) *EVALUATION REQUIRED.*—

(1) *IN GENERAL.*—Before awarding a competitive grant and after determining eligibility and conducting a merit-based review, an Executive agency shall conduct an evaluation of the risk posed by an applicant to successfully carry out the grant in accordance with section 200.205 of title 2, Code of Federal regulations (or any successor thereto).

(2) *REVIEW OF INTERAGENCY DUPLICATION.*—To the extent practicable, each evaluation conducted under paragraph (1) shall include a review of any interagency duplication of efforts for research grants, which may be completed through a text-similarity detection process.

(b) *SIMPLIFIED EVALUATION PROCEDURE FOR CERTAIN APPLICANTS.*—

(1) *DEFINITION.*—In this subsection, the term ‘covered applicant’ means an applicant that, based on a risk assessment conducted by the Executive agency, is determined to pose a relatively low risk of failing to execute the grant successfully and properly.

(2) *PROCEDURE.*—In conducting the evaluation required under subsection (a) with respect to a covered applicant, an Executive agency shall—

(A) minimize the burden on the covered applicant; and

(B) consider any existing findings with respect to the covered applicant under the single audit process under chapter 75 of this title related to the matters described in subsection (b).

SEC. 7403. WEBSITE RELATING TO FEDERAL GRANTS

(a) *REQUIREMENT.*—The Director of the Office of Management and Budget shall consult with Executive agencies to upgrade grants.gov or any proposed successor public website for finding Federal grant opportunities and applying for those grants so that the website—

(1) may serve as a central point of information and provide full access for applicants for competitive grants; and

(2) shall capture in 1 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 Executive agency shall post on the grants website maintained under this section, in a searchable electronic format, relevant information about the grant opportunity, including—

(1) the grant announcement and purpose of the grant;

(2) the anticipated period of performance for new awards and whether the Executive agency anticipates that the grant will be continued;

(3) in the case of an announcement with respect to which a specific sum is reserved, the amount of funds available for the grant;

(4) a statement of eligibility requirements for the grant;

(5) 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) a clear statement of the evaluation factors or criteria that the Executive 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) a description of the process and standards to be used by the Executive 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) the anticipated deadline for submission of grant applications or proposals; and (9) a set of sample winning grant proposals awarded under the same or similar program within the last 3 years.

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

(1) use the website with any widely-used computer platform;

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

(3) apply for a competitive grant using the website.

(d) *TECHNICAL ASSISTANCE FOR GRANTEEES.*—

(1) *IN GENERAL.*—Each Executive agency shall make available on the grants website maintained under this section detailed grant guidance and written technical assistance for applicants.

(2) *GRANT AWARD PROCESS INFORMATION POSTED.*—With respect to each grant awarded by an Executive agency, the Executive agency shall, not later than 30 days after the date on which the grant is awarded, post on the grants website maintained under this section—

(A) 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, whether the grant was awarded consistent with a numerical ranking or other recommendations by grant reviewers; and

(B) 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.

(3) SENSITIVE INFORMATION.—

(A) PERSONALLY IDENTIFIABLE INFORMATION.—Each Executive agency may redact any personally identifiable information from a post on the grants website maintained under this section.

(B) ADVERSE INFORMATION.—An Executive agency may not post on the grants website maintained under this section any sensitive information that the Executive agency determines would adversely affect an applicant.

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

(1) REQUIREMENT.—Not later than November 30 of each fiscal year or not later than 60 days after the date on which amounts are appropriated to an Executive agency for a fiscal year, whichever is later, the head of the Executive agency shall post a forecast, in accordance with paragraph (2), of all non-emergency grant solicitations that the Executive agency expects to issue for the following calendar year, which—

(A) shall be based on the best information available; and

(B) shall not be binding on the Executive agency.

(2) MATTERS INCLUDED.—The forecast required under paragraph (1) shall include, to the extent practicable, for each expected grant solicitation in a machine-readable format—

(A) a brief description of the subject and purpose of the grant, organized by the organizational unit of the Executive agency;

(B) contact information for the organizational unit or individual responsible for the grant, if known, including name, telephone number, and electronic mail address;

(C) the expected or actual dates for the issuance of the grant solicitation and application and the grant application submission deadline;

(D) 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; and

(E) a description of the total amount available to be awarded.

(f) PUBLICATION OF INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this section shall be construed to require the publication of information otherwise exempt from disclosure under section 552 of title 5 (commonly referred to as the ‘Freedom of Information Act’).

(2) LIMITATION.—The exemption under section 552(b)(5) of title 5 shall not exempt from publication predecisional docu-

ments required to be posted pursuant to the requirements under subsection (d)(2).

(g) **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;

(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.

SEC. 7404. POSTDECISION EXPLANATION FOR FAILED APPLICANTS

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 direct interaction describing the basis for the award decision of the Executive agency, including, if applicable, the decision not to award a grant to the applicant.

SEC. 7405. INSPECTOR GENERAL REVIEW OF PEER REVIEW PROCESS

Not later than 18 months after the date of enactment of the Grant Reform and New Transparency Act of 2016, the Inspector General of each Executive agency that awards competitive grants shall conduct a review of the effectiveness of the conflicts of interest policy of the Executive agency, including a review of a random selection of peer review processes, with respect to the peer review process for competitive grants in order to detect favoritism.