**California Code of Regulations**

**Title 9. Rehabilitative and Developmental Services**

**Division 3. Department of Rehabilitation**

**INITIAL STATEMENT OF REASONS**

# PROBLEM STATEMENT

The Department of Rehabilitation (“Department”) has authority to grant funds to entities serving individuals with disabilities. Title 34 Code of Federal Regulations part 76.770 requires the Department to have procedures for reviewing and approving grant applications. The Department’s current regulations in section 7334 do not describe the basic grant award process. To increase consistency and promote transparency, the Department proposes to adopt sections 7333.1 through 7333.16 to provide staff, applicants, and members of the public, including stakeholders, clear guidance and information on the Department’s competitive grant award process, including administrative review and evaluation of applications, notice of intent to award, and appeals. The Department is also amending section 7334 to align with proposed sections 7333.1 through 7333.16.

# BENEFITS

Benefits of the proposed regulations include providing clarity and guidance to staff, applicants, and other members of the public as to the Department’s competitive grant award process. The proposed regulations will increase consistency and promote transparency in relation to the Department’s competitive grant award process. Greater understanding of the process may also reduce the number of appeals, which delay award of funding to programs serving Californians with disabilities.

# SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION ADDED OR AMENDED BY THE PROPOSED RULEMAKING

**Sections 7333.1 through 7333.16**

Federal regulation requires agencies to have procedures for reviewing and approving grant applications. (34 C.F.R. 76.770.) Existing state regulations do not include the Department’s process for reviewing and approving grant applications. Proposed sections 7333.1 through 7333.16 clarify and make specific the Department’s process for reviewing and approving grant applications, consistent with federal requirements. The specific purpose and further discussion of necessity for sections 7333.1 through 7333.16 are provided below.

The authority citations identified in each of the proposed sections, sections 7333.1 through 7333.16, are Welfare and Institutions Code sections 19006 and 19016. The reference citation for the adoption of each of these sections is 34 Code of Federal Regulations 76.770, as explained above.

**Section 7333.1. Basic Competitive Grant Award Process**

Purpose: This section identifies that the purpose of the proposed regulations is to describe the Department’s basic competitive grant award process.

Necessity: The Department administers several different grant programs, including independent living services, traumatic brain injury, and assistive technology. This section is necessary to identify the type of grants that are subject to the proposed regulations, specifically competitively awarded grants. The Department is also clarifying that the procedures are the basic procedures and do not address any specific requirements that may be applicable to a grant program.

**Section 7333.2. Applicability**

Purpose: This section identifies the regulation sections that apply to the Department’s basic competitive grant award process.

Necessity: Some grant funding merely passes through the Department to independent living programs without competition, while other grant funding is awarded by the Department on a competitive basis. This section is necessary to identify that the proposed regulations provide basic procedures applicable to grants awarded on a competitive basis.

**Section 7333.3(a)(1) Definition of Appellant**

Purpose: This section clarifies and makes specific the term “appellant” as used in the proposed regulations by defining an appellant as an applicant who files an appeal pursuant to proposed section 7333.11.

Necessity: This section is necessary, as some provisions of the proposed regulations only apply to applicants who file appeals and not all applicants. Defining the term provides for a common, consistent understanding.

**Section 7333.3(a)(2) Definition of Applicant**

Purpose: This section clarifies and makes specific the term “applicant” as used in the proposed regulations by defining an applicant as an entity or person who submit an application in response to a request for applications for a competitive grant award released by the Department.

Necessity: This section is necessary, as many of the provisions only apply to entities or persons who have submitted applications for a competitive grant award. Provisions that apply only to applicants include those provisions requiring the Department to send written notice to applicants and establishing the right of an applicant to file an appeal. These provisions do not apply to other members of the public, and defining the term provides for a common, consistent understanding.

**Section 7333.3(a)(3) Definition of Application**

Purpose: This section clarifies and makes specific the term “application” as used in the proposed regulations by defining an application as a proposal submitted by an applicant in response to a request for applications for a competitive grant award.

Necessity: This section is necessary to clarify that the Department is using the term “application” generally, as a proposal submitted in response to a request for applications, rather than adopting a specific application form or format for the purpose of these regulations, as program and funding requirements for the Department’s different competitive grant programs vary.

**Section 7333.3(a)(4) Definition of Decision Review Notice**

Purpose: This section clarifies and makes specific the term “decision review notice” as used in the proposed regulations by defining it as the written statement of conclusions of the Grant Review Committee in relation to its review of a decision after re-evaluation by an Evaluation Panel. .

Necessity: This section is necessary to define a term in section 7333.15, which provides a review by the Grant Review Committee to ensure that the Evaluation Panel complies with section 7333.8(b) and (c). A common understanding of the term is important for parties and staff involved in the appeal process.

**Section 7333.3(a)(5) Definition of Disqualifying Conflict of Interest**

Purpose: Section 7333.3(a)(5) clarifies and makes specific the term “disqualifying conflict of interest” as used in the proposed regulations. Subparagraph (A) adopts the meaning as provided in Government Code section 87100. Subparagraph (B) provides that an individual is who is a volunteer, recipient of services or relative of an applicant has a disqualifying conflict of interest. Subparagraph (C) adopts the prohibition provided in Government Code section 11000.5, which provides that an individual shall not serve as an Evaluation Panel member or alternate, if the individual was a representative, voting member, or staff member of an applicant within the two-year period preceding receipt of the application.

Necessity: Defining “disqualifying conflict of interest” is necessary, as applications for competitive grant awards are evaluated by an Evaluation Panel made up of persons selected by the Department. To guard against actual, potential, or perceived preference for or against an applicant, the Department reviews for relationships between applicants and individuals who may be selected by the Department as Evaluation Panel members. In developing the proposed regulation, the Department considered its incompatible activities statement found in California Code of Regulations, title 9, section 7412 and state contracting policies provided in section 9.07 of Volume I of the State Contracting Manual

(<https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting?search=scm>). Rather than establishing a new definition, the Department is applying the existing statutory definition for the purpose of this process. Selecting individuals to serve as Evaluation Panel members who do not have disqualifying conflicts of interest promotes fairness, provides for an unbiased, reliable evaluation of applications, and instills confidence in the evaluation process.

**Section 7333.3(a)(6) Definition of Evaluation Criteria**

Purpose: This section clarifies and makes specific the term “evaluation criteria” as used in the proposed regulations by defining evaluation criteria as the scoring guide developed by the Department to evaluate the responsiveness of applications.

Necessity: Due to the varying program needs and funding requirements for the Department’s different competitive grant programs, the definition clarifies that the Department is using this term generally in the proposed regulations.

**Section 7333.3(a)(7) Definition of Grant File**

Purpose: This section clarifies and makes specific the term “grant file” as used in the proposed regulations by defining grant file as an electronic or paper file, or combination thereof, where the Department will maintain records relating to a request for applications, applications, appeals, and other records.

Necessity: Each grant award undertaken by the Department may generate numerous records, including documents issued by the Department and received from applicants. To provide for a common, consistent understanding and expectation, defining “grant file” is necessary to establish the type of records the Department will maintain. Defining the term grant file is particularly important in relation to where the Department will maintain extraneous documents submitted by an applicant but not required by a request for applications pursuant to proposed section 7333.4(b). Also, the definition provides for flexibility in that the grant file may be in either electronic or paper form.

**Section 7333.3(a)(8) Definition of Grant Program**

Purpose: This section clarifies and makes specific the term “grant program” and “competitive grant program” as used in the proposed regulations by defining these terms as a program in which funding is available for award by the Department through a competitive process for specific purposes. “Grant program” and “competitive grant program” are used interchangeably in the proposed regulations.

Necessity: The Department administers several grant programs. Defining “grant program” is necessary to clarify that proposed regulations provide for the Department’s basic grant award process and are not specific to any one program. The term grant program and competitive grant program are used generally in the proposed regulations, and the definition provides for a common, consistent understanding.

**Section 7333.3(a)(9) Definition of Incompatible Activity**

Purpose: This section clarifies and makes specific the term “incompatible activity” as used in the proposed regulations by defining incompatible activity as any employment, activity, or enterprise which is inconsistent, incompatible, in conflict with, or inimical of the duties as an Evaluation Panel member and includes examples of some activities and enterprises that are incompatible activities.

Necessity: Defining “incompatible activity” is necessary as applications for competitive grant awards are evaluated by an Evaluation Panel made up of persons selected by the Department. To guard against actual or perceived unfair preference or conflict, the Department must evaluate individuals who may be selected as Evaluation Panel members. Selecting individuals who do not engage in incompatible activities to serve as Evaluation Panel members promotes fairness, provides for an unbiased, reliable evaluation of applications, and instills confidence in the evaluation process. The proposed regulation identifies activities that the Department has determined are not compatible with the responsibilities of an Evaluation Panel member. In developing the proposed regulation, the Department considered its incompatible activities statement found in California Code of Regulations, title 9, section 7412 and state contracting policies provided in section 9.07 of Volume I of the State Contracting Manual (<https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting?search=scm>).

**Section 7333.3(a)(10) Definition of Intended Awardee**

Purpose: This section clarifies and makes specific the term “intended awardee” as used in the proposed regulations by defining an intended awardee any applicant announced by the Department, the entity, or person whom the Department intends to award a grant to.

Necessity: Intended awardee is a commonly used term in competitive public contract and grant opportunities. However, it may not be a familiar term to some members of the public, and the definition is necessary to provide for a common, consistent understanding.

**Section 7333.3(a)(11) Definition of Record**

Purpose: This section clarifies and makes specific the term “record” as used in the proposed regulations by defining record as any handwriting, typewriting, printing, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record is stored.

Necessity: This section is necessary to provide a common, consistent understanding and ensure consistency with the California Public Records Act (Government Code section 6250 et seq.), the definition of “record” for the purpose of the proposed regulations essentially mirrors the definition of “writing” in Government Code section 6252(g).

**Section 7333.3(a)(12) Definition of Request for Applications**

Purpose: This section clarifies and makes specific the term “request for applications” as used in the proposed regulations by defining request for applications as the record developed by the Department specific to each competitive grant program for which the Department intends to make a grant award and includes the minimum requirements established in proposed section 7333.5.

Necessity: Defining “request for applications” is necessary, to clarify that the Department is using the term request for applications generally and identifying the elements or information that must be included in proposed section 7333.5. Due to the varying program and funding requirements for the Department’s different competitive grant programs, the Department is not adopting a specific request for applications form or format for the purpose of these regulations.

**Section 7333.3(a)(13) Definition of Score Sheet**

Purpose: This section clarifies and makes specific the term “score sheet” as used in the proposed regulations by defining a score sheet as the record identifying the evaluation criteria upon which an Evaluation Panel member records their scores.

Necessity: Defining “score sheet” is necessary to clarify that the Department is not adopting a specific score sheet form or format for the purpose of these regulations. Rather, the Department is using the term score sheet generally and identifying the elements or information that must be included in the score sheet and its purpose due to the varying program and funding requirements for the different competitive grant programs.

**Section 7333.4. Administrative Review**

Purpose: Subdivision (a) of this section clarifies and makes specific the Department’s process for determining whether an application meets the eligibility and application requirements for a grant award.

Subdivision (b) of this section clarifies and makes specific the steps that the Department will take should an application include extraneous materials, meaning materials not required by the request for applications. These steps include separating any extraneous materials and placing them in the grant file. Grant file is defined in proposed section 7333.3(a)(7).

Subdivision (c) of this section clarifies and makes specific the process for those applications determined to have met the requirements in a request for applications, specifically evaluation by the Evaluation Panel. The provision also clearly informs applicants and the public as to the Department’s administrative review of all applications and that only those applications determined eligible and meeting the requirements of the request for applications will be submitted to the Evaluation Panel for evaluation.

Subdivision (d) of this section clarifies and makes specific that applications determined not to meet application requirements are disqualified.

Necessity: Subdivision (a) is necessary to establish an initial administrative review process to ensure that only those applications that meet the eligibility and application requirements for a grant and thus have potential for award are evaluated by the Evaluation Panel.  This initial administrative review process promotes efficiency and consistency.

Subdivision (b) is necessary to address situations where applicants submit materials that are not required and to inform applicants and the public that these extraneous materials will not be provided to or considered by the Evaluation Panel. This process is necessary to ensure that only required information is evaluated by the Evaluation Panel.

Subdivision (c) is necessary to inform applicants and the public that the next step for applications determined eligible and meeting application requirements is evaluation by the Evaluation Panel.

Subdivision (d) is necessary to inform applicants and the public of the next step for applications determined not eligible or meeting application requirements is disqualification as provided in section 7333.5.

**Section 7333.5. Disqualification of an Application**

Purpose: Subdivision (a) of this section clarifies and makes the grounds for disqualification of an application, which are: (1) failure to meet eligibility requirements established in the request for applications; (2) failure to meet application requirements established in the request for applications; (3) request for funding included in the application exceeds the maximum award amount allowable, as identified in the request for applications; (4) failure to include all required information as identified in the request for applications; and (5) submission of the application after the deadline identified in the request for applications.

Necessity: Subdivision (a) is necessary to ensure a consistent, transparent competitive process, as it establishes the grounds for disqualification of an application. Paragraphs (1) through (5) discussed below inform applicants and public of the specific grounds for disqualification. The clarification provided in this section may reduce complaints or appeals.

Paragraph (1) provides that an applicant who does not meet the eligibility requirements will be disqualified from the grant award process. It is necessary to inform applicants and the public of the consequence of not meeting eligibility requirements. Also, it is necessary to establish this as a ground for disqualification, so that the Evaluation Panel does not evaluate an application that has no potential for an award.

Paragraph (2) provides that an application that does not meet the application requirements will be disqualified from the grant award process. It is necessary to inform applicants and the public of the consequence of an application not meeting the application requirements. Also, it is necessary to establish this as a ground for disqualification because applicants must be held to the same requirements and the Evaluation Panel must have the opportunity to review and revaluate all required information for all applicants.

Paragraph (3) provides that an application which includes a funding request that exceeds the maximum award amount available will be disqualified from the grant award process. It is necessary to inform applicants and the public of the consequence of a funding request that exceeds the maximum award available. Also, it is necessary to establish this as grounds for disqualification because the applicant’s proposal is not responsive in that it is based on funding not available.

Paragraph (4) provides that an application that does include all the required information will be disqualified from the grant award process. It is necessary to inform applicants and the public of the consequence of not submitting all the required information. Also, it is necessary to establish this as a ground for disqualification because applications must be consistently evaluated to ensure a fair, competitive process.

Paragraph (5) provides that an application submitted after the deadline for submission will be disqualified. It is necessary to inform applicants and the public of the consequence of not submitting applications timely and supports a fair, competitive process.

Purpose: Subdivision (b) of this section clarifies and makes specific the notification process for applicants whose applications are disqualified, including method, timing, and contents of the notice.

Necessity: Establishing the method, timing, and contents of the notice of disqualification is necessary to ensure that disqualified applicants are fully informed of the reasons their application was disqualified and their right to appeal the Department’s decision. Notice is also necessary to promote consistency and transparency. This section also establishes email as the method of delivery to reduce the timeframe for transmission of important, time-sensitive information to all parties involved.

**Section 7333.6. Evaluation Panel**

Purpose: Subdivision (a) of this section clarifies and makes specific that it is the Department’s sole responsibility to select Evaluation Panel members.

Necessity: Establishing the Department’s responsibility in selecting Evaluation Panel members is necessary to ensure a consistent, transparent competitive process.

Purpose: Subdivision (b) of this section clarifies and makes specific the minimum number of individuals on an Evaluation Panel, provides for alternates should an Evaluation Panel member be unable to serve, and prohibits an alternate from participating unless they become an Evaluation Panel member.

Necessity: Requiring an Evaluation Panel to consist of more than one individual is necessary to garner diverse perspectives and experiences resulting in a more balanced evaluation process. Further, providing for alternates provides an efficient mechanism to replace Evaluation Panel members when necessary to avoid delays in the process and award. Requiring the Evaluation Panel to start evaluation discussions from the beginning when an alternate joins as an Evaluation Panel member ensures that all applications are consistently evaluated by the same Evaluation Panel members and that the evaluation process benefits from the perspectives and experiences of the same Evaluation Panel members. Informing applicants and the public of the makeup of Evaluation Panels and the role of alternates promotes consistency and transparency.

Purpose: Subdivisions (c) and (d) of this section clarify and make specific the requirements for individuals to be considered by the Department as an Evaluation Panel member. These requirements require an interested individual to submit qualifications, receive information about the grant process, possess knowledge of or experience related to the grant program, possess no disqualifying conflicts of interest, engage in no incompatible activities, possess knowledge of and agree to confidentiality requirements, and not be disqualified under Government Code section 11000.5.

Necessity: Establishing criteria for individuals to be considered as Evaluation Panel members is necessary to provide the Department with the information it needs to select qualified, experienced, and unbiased Evaluation Panel members, which instills public confidence in a consistent, transparent, and fair competitive process. For discussion of information the Department considered in establishing the requirements, see above in relation to the definitions of disqualifying conflict of interest and incompatible activity in proposed section 7333.3(a)(5) and (9), respectively.

**Section 7333.7. Confidentiality**

Purpose: This section clarifies and makes specific confidentiality requirements that an individual must agree to adhere to prior to the Department considering them as an Evaluation Panel member or alternate.

Necessity: Confidentiality of individuals evaluating applications is fundamental in a fair competitive grant award process. As such, establishing confidentiality requirements is necessary and emphasizes the expectation for Evaluation Panel members, applicants, and the public. It is also necessary to instill public confidence and guard against unfair advantage or the appearance thereof.

**Section 7333.8. Evaluation**

Purpose: This section clarifies and makes specific the process an Evaluation Panel will follow in evaluating applications determined eligible and meeting the application requirements. Subdivision (a) provides that each member of an Evaluation Panel will receive all applications determined eligible, that meet the application requirements, and the request for applications, which include the evaluation criteria and score sheet. Subdivision (b) requires each Evaluation Panel member to evaluate each application in accordance with the evaluation criteria and score sheet provided in the request for applications. Subdivision (c) requires each Evaluation Panel member to record their written scores and comments on the score sheet. Subdivision (d) requires the Department to collect all score sheets.

Necessity: This section is necessary to establish the consistent process that the Department and all Evaluation Panel members will use in evaluating applications determined eligible and meeting the application requirements increases consistency and promotes transparency. In developing the proposed regulations, the Department considered its practices for evaluating contract and grant proposals.

Subdivision (a) is necessary to inform applicants, Evaluation Panel members, and the public that at the beginning of the evaluation process, Evaluation Panel member will receive certain information and documentation, as discussed below. This ensures a consist, transparent process and informs applicants and the public exactly what information Evaluation Panel members review and base their evaluations on.

Paragraph (1) provides that Evaluation Panel members will receive all applications that are determined eligible and meet the application requirements, which is consistent with section 7333.4(c). Providing Evaluation Panel members with all eligible applications meeting the application requirements is necessary, as the competitive grant award process is based on the proposals or applications submitted.

Paragraph (2) provides that Evaluation Panel members will receive the Department’s request for applications. This is necessary to inform the Evaluation Panel members as to the scoring criteria and ensure that scoring is transparent and consistent.

Subdivision (b) is necessary to inform applicants, the public, and Evaluation Panel members how Evaluation Panel members are to evaluate the applications. To ensure a consistent, transparent, and fair competitive process, Evaluation Panel members are required to evaluate applications using the same criteria and score sheet provided in the request for applications.

Subdivision (c) is necessary to establish how each Evaluation Panel member is to record their scores and the rationale or support for each score recorded. Documenting each Evaluation Panel member’s scores using score sheets with comments provides information for applicants and the public to ensure a consistent, transparent, fair competitive process, including applicants who are considering whether to appeal. The score sheets are also important in the post-evaluation review provided in section 7333.9.

Subdivision (d) is necessary to ensure score sheets are retained by the Department. As noted above, score sheets provide important information in the post-evaluation review and for applicants in considering whether to appeal.

**Section 7333.9. Post-Evaluation Review**

Purpose: Subdivision (a) of this section clarifies and makes specific that the Department will conduct a Post-Evaluation Review prior to releasing a notice of intent to award to ensure that the Evaluation Panel followed the required procedures in proposed section 7333.8.

Necessity: Establishing a Post-Evaluation Review process is necessary to identify any procedural deficiencies in advance of posting the notice of intent to award and provide the opportunity to correct noted procedural deficiencies. This process will increase the reliability of the evaluation results and may reduce appeals, which delay the award of grant funding.

Purpose: Subdivision (b) of this section clarifies and makes specific that the Department will issue the notice of the intent to award that follows the Post Evaluation Panel’s results, if it concludes that the applicable regulations were adhered to.

Necessity: Proceeding with a notice of intent to award following the Evaluation Panel results after a Post Evaluation Review is necessary to complete the evaluation process. It also increases consistency and promotes transparency in the competitive grant award process.

Purpose: Subdivision (c) clarifies and makes specific the options available to the Department should the Post-Evaluation Review find that the Evaluation Panel did not follow the required procedures in proposed section 7333.8 and the situations in which each option may apply. The proposed regulations provide the Department with the following three options: (1) return the applications to the Evaluation Panel for re-evaluation with writing guidance on correcting the procedural error when the Evaluation Panel can correct the error; (2) set aside the Evaluation Panel’s results, take steps to correct the procedural error, and convene a new Evaluation Panel to evaluate all applications from the beginning when the Evaluation Panel cannot correct the error; or (3) withdraw the request for applications and release a new request for applications to correct the procedural error when the error cannot be corrected without amending or changing the request for applications.

Necessity: Establishing the options available and when the different options are appropriate to address procedural errors in the grant award process is necessary to provide the Department with an efficient, effective mechanism to identify and correct procedural errors at the earliest possible time, thereby reducing time-consuming, unnecessary appeals, which delay the award of grant funding. In developing this provision, the Department drew on its existing experiences where these actions have been taken. As previously noted, the Department’s existing regulations do not describe the competitive grant award process. Adopting a provision that describes the process for correcting procedural errors increases consistency and promotes transparency.

Paragraph (1) provides the option when the procedural error can be corrected by the Evaluation Panel. This provides an efficient, effective mechanism to correct the procedural error and proceed with the notice of intent to award.

Paragraph (2) provides the option in more complex situations where the Evaluation Panel cannot simply correct the error. With this option, steps are taken to prevent the procedural error from reoccurring and convening a new Evaluation Panel.

Paragraph (3) provides the option when the request for applications must be amended or changed to prevent the error from reoccurring.

**Section 7333.10. Notice of Intent to Award**

Purpose: Paragraphs (1) through (5) of subdivision (a) of this section clarifies and makes specific the information that will be included in a notice of intent to award—name of the grant program along with the identifying number of the request for applications, name of the intended awardee, date of the notice, duration of the intended agreement, information on how to access or request records relevant to the intended grant award, and appeal rights and procedures.

Necessity: Identifying specific information to be included in a notice of intent to award is necessary to promote consistency as well as efficiency in terms of informing applicants how to access or request records relating to the intent to award, of their appeal rights, and of the appeal procedures. In developing this regulation, the Department considered the notices of intent to award used for previous grant and contract awards.

Paragraph (1) requires the notice of intent to award to include the name of the grant program and identifying number for the request for application, which is necessary to ensure that applicants and the public are reviewing the notice that they are interested in. This paragraph also requires the name of the intended awardee, which is necessary to inform applicants and the public who the Department has selected as the intended awardee.

Paragraph (2) requires the notice of intent to award to include the date of the notice. This information is necessary to determine the appeal period provided in section 7333.11(b).

Paragraph (3) requires the notice of intent to award to include the duration of the intended grant agreement. This information is necessary to inform applicants, including the intended awardee, and the public of the intended term of the grant agreement, as this may have changed during the competitive grant award process.

Paragraph (4) requires the notice of intent to award to include information on how applicants and the public may access or request records relevant to the intended grant award. This information is included to ensure that applicants not selected for the intended award know how to quickly, efficiently request public records, as applicants typically consider records from the grant file when determining whether to file an appeal.

Paragraph (5) requires the notice of intent to award to include the appeal right and procedures. This information is necessary to inform applicants of their rights and the process for filing an appeal.

Purpose: Subdivision (b) of this section clarifies and makes specific the address that the Department will use to send a notice of intent to award to the intended awardee.

Necessity: Identifying the specific address that the Department will use to transmit a notice of intent to award to an intended awardee is necessary to promote consistency. Also, it emphasizes to the applicants the importance of the contact information provided in the application and places the responsibility on the intended awardee to monitor their incoming correspondence.

Purpose: Subdivision (c) of this section clarifies and makes specific that the Department will post the notice of intent to award on the Department’s website for at least 30 calendar days.

Necessity: Identifying that the notice of intent to award will be publicly posted for a specific time period is necessary to ensure immediate public access and invites interested parties to monitor the Department’s website.

Specific Purpose: Subdivision (d) of this section clarifies and makes specific the conditions under which the Department may award a grant.

Necessity: Establishing the conditions that must be met before the Department may award a grant is necessary to ensure all parties either receive or have access to the notice of intent to award, and all appeals are resolved.

**Section 7333.11. Applicant Appeals**

Purpose: Subdivisions (a) through (c) of this section clarify and make specific the requirements for filing an appeal, including possible grounds, deadlines, format, and required information.

Necessity: Subdivision (a) establishes the two specific grounds for an appeal, which is necessary to support consistency, transparency, and fair competition and reducing the likelihood of frivolous appeals that delay the award of funding. Paragraph (1) allows an appeal based on the Department’s disqualification of an application, which is necessary to ensure fair competition should it be determined that the Department erred in disqualifying an application. Paragraph (2) allows an appeal based on a claim that the Department or Evaluation Panel committed an error or omission that may have changed the outcome of the intended grant award. This provision is necessary to ensure fair competition but also prevent appeals where the error or omission did not impact the outcome.

Subdivision (b) establishes a reasonable timeframe of 30 days for filing an appeal. This timeframe is necessary to ensure appellants have reasonable time to prepare an appeal while also guarding against unreasonable delay before funding is awarded. The subdivision also establishes that applicants are to submit appeals by email to the Department. Email provides an efficient, effective method of delivery, which reduces delays caused by other methods of delivery.

Paragraphs (1) through (4) of subdivision (c) establish the information that must be included in an appeal as discussed below.

Paragraph (1) requires the name of the applicant and authorized representative submitting the appeal, which is necessary to identify the applicant, typically a nonprofit organization, that is filing the appeal and the person authorized to represent the appellant.

Paragraph (2) requires the email address of the applicant where all notices relating to the appeal will be sent, which is necessary to ensure that the applicant receives all notices promptly. The paragraph also permits the applicant to provide up to two addresses, which is necessary as an applicant or authorized representative typically utilizes more than one email address and provides a centralized point of receipt, promoting timely delivery and efficiency.

Paragraph (3) requires a description as to why the Department should not have disqualified the application or of the error or omission of the Department or Evaluation Panel that is the subject of the appeal. This information is necessary for the Department to evaluate whether there are grounds for the appeal as provided in subdivision (a) of this section. This requirement also guards against frivolous appeals, which delay the award of funding.

Paragraph (4) requires information, including statement and documents, demonstrating that an error or omission of the Department or Evaluation Panel occurred, and that error or omission is more likely than not to have changed the outcome of the grant award. This information is necessary for the Department to evaluate whether there are grounds for an appeal as provided in subdivision (a) of this section. If so, it also ensures that the Grant Review Committee, when appointed, may promptly start their review, which will reduce unreasonable delays in awarding the grant funding. This requirement also guards against frivolous appeals, which delay the award of funding.

Purpose: Subdivision (d) of this section clarifies and makes specific that the Department will deny an appeal not received by the deadline established in accordance with subdivision (b) of this proposed section.

Necessity: Providing for the denial of untimely appeals is necessary to ensure that grant awards are not unreasonably delayed.

**Section 7333.12. Grant Review Committee**

Purpose: Subdivisions (a) through (d) of this section clarify and make specific the process for the timely review of appeals based on written records, including the appointment of a Grant Review Committee by the Chief Deputy Director or their designee, the maximum number of members of a Grant Review Committee, and the information that must be provided to both the intended awardee and appellant.

Necessity: Subdivision (a) requires the Grant Review Committee to render a decision on all timely appeals within 45 calendar days. This timeframe is necessary for consistency and to inform applicants, including an intended awardee, of the time frame for a decision on the appeal. Also, the 45-day timeframe is necessary to provide adequate review time, while guarding against unreasonable delays in awarding funding intended to benefit people with disabilities.

Subdivision (b) is necessary to inform applicants, including appellants, and the public that the Grant Review will be conducted on the written record without a hearing. Also, establishing the way the Grant Review will be conducted is necessary to ensure a consistent, transparent process.

Subdivision (c) is necessary to inform applicants, including appellants, and the public who will appoint the Grant Review Committee members and that only state employees may serve on the Grant Review Committee. Based on the important decision-making role and authority the Grant Review Committee has in the grant award process, the Department determined that it is necessary for the Chief Deputy Director or their designee to appoint the members and that the members must be state employees. Also, this ensures a consistent, transparent appeal process is conducted by a neutral review committee and that the appellant and intended awardee are fully informed of the process. This appeal process also promotes public confidence in the results.

Subdivision (d) requires the Department to send by email a written notice to the appellant and intended awardee with specific information identified in paragraphs (1) through (5). This provision is necessary to ensure that all applicants impacted by the appeal receive notice of the appeal promptly and efficiently.

Paragraph (1) requires the notice to include the date the appeal was received, which is necessary to inform the appellant and intended awardee of the timeliness of the appeal.

Paragraph (2) requires the notice to include the action appealed, which is necessary information for the intended awardee in determining whether to submit a written statement and documentary information to respond to the appeal in accordance with section 7333.13(a)(2).

Paragraph (3) requires the notice to include the names, titles, and qualifications of the Grant Review Committee members. This information is necessary to inform the appellant and intended award of the state employees who will be serving as the decision makers and promotes public confidence and transparency.

Paragraph (4) requires the notice to include the date by which the Grant Review Committee must render a written decision. This information is necessary to ensure consistency and transparency. Also, this information is necessary for the intended awardee’s planning purposes in anticipation of the funding award.

Paragraph (5) requires the notice to include information on how to access or request copies of certain public records. This provision is necessary to inform the appellant and intended awardee of what types of records are available and how to request copies quickly and efficiently, given the timeframe in which the Grant Review Committee must render a decision.

Purpose: Subdivision (e) of this section clarifies and makes specific that the Chief Deputy Director or their designee at their discretion may remove and appoint members of the Grant Review Committee and that notice of such changes must be provided to the appellant and intended awardee.

Necessity: Permitting the removal and addition of members of the Grant Review Committee is necessary to ensure the Department has the flexibility to respond to unrelated, unexpected workload and unforeseen absences, thereby avoiding delay. Notice to the appellant and intended awardee is necessary to promote transparency.

**Section 7333.13. Grant Review Procedures**

Purpose: This section clarifies and makes specific the Grant Review procedures. Subdivision (a) provides that the Grant Review Committee will email a written notice to the appellant and intended awardee of the due dates for written submission deadlines for written statements and opportunity to submit further information in accordance with paragraphs (1) and (2).

Necessity: Subdivision (a) is necessary to inform the appellant and intended awardee of how and when the Grant Review Committee will notify them of deadlines for submitting written statements and additional information. Paragraph (1) is necessary to inform the appellant that they may submit additional written information to support their position by the date provided by the Grant Review Committee. Paragraph (2) is necessary to inform the intended awardee that they may submit a written statement and documentary information to respond to the appeal by the date provided by the Grant Review Committee. Paragraph (3) permits the Grant Review Committee to review other information that it deems relevant to the matter.

Purpose: Subdivision (b) establishes what information the Grant Review Committee will review, which includes the appeal, information submitted by the appellant and intended awardee in accordance with subdivision (a) of this section, and any other records the Grant Review Committee determines relevant to the appeal.

Necessity: Subdivision (b) is necessary to inform the Grant Review Committee, appellant, and intended awardee of the information that will be reviewed by the Grant Review Committee. This ensures a consistent, transparent process and that the Grant Review Committee’s decision is informed by relevant information. Paragraph (1) requires the Grant Review Committee to review the appeal, which is necessary to identify the grounds for the appeal and information supporting the appeal. Paragraph (2) requires the Grant Review Committee to review all written statements and documentary information by the appellant and intended awardee, which is necessary to ensure a comprehensive, balanced, and thorough review by the Grant Review Committee. Paragraph (3) permits the Grant Review Committee to request and review additional or clarifying information, which is necessary to ensure that the Grant Review Committee has the benefit of all relevant, clear information to inform their review and decision.

Purpose: Subdivision (c) permits the Grant Review Committee to send a letter by email to the appellant, intended awardee, or Department staff requesting additional or clarifying information be submitted to the Grant Review Committee by the date identified in the letter. Paragraph (1) requires all parties to receive a copy of the letter.

Necessity: Subdivision (c) is necessary to inform the Grant Review Committee, all parties, and the public how the Grant Review Committee may request additional or clarifying information by a certain date pursuant to subdivision (b)(3). Identifying a due date is necessary to support the Grant Review Committee in meeting the 45-day deadline for rendering a grant review decision. Paragraph (1), requiring all parties to receive a copy of the letter, is necessary to ensure a consist, transparent process.

**Section 7333.14. Grant Review Committee Decision**

Purpose: Subdivision (a) of this section clarifies and makes specific the Grant Review Committee’s standard of review.

Necessity: Establishing a standard of review is necessary to ensure a consistent, transparent decision-making process.

Purpose: Subdivision (b) clarifies and makes specific the authority of the Grant Review Committee to render a decision consistent with its findings and the basic competitive grant award regulations. It also identifies the actions that the Grant Review Committee may take in paragraphs (1) through (5), which are discussed below.

Necessity: Establishing the authority of the Grant Review Committee to render a decision consistent with its findings and these proposed regulations is necessary to effectuate the purpose of the competitive grant award process and efficiently resolve deficiencies without undue delay consistent with a transparent process for all interested parties, including the Department. Specifying the different options or actions that the Grant Review Committee may order provides the Grant Review Committee with guidance and establishes a consistent, transparent process that also provides flexibility to effectively address deficiencies. In developing this regulation, the Department considered previous Grant Review Committee decisions.

Purpose: Paragraph (1) authorizes the Grant Review Committee to uphold the notice of intent to award when it determines that the procedures provided in section 7333.4 through 7333.10 were followed or the outcome of the grant award was not changed because of any deviations from the procedures.

Necessity: Establishing when it is appropriate for the Grant Review Committee to uphold a notice of intent to award is necessary to provide guidance for the Grant Review Committee and ensure consistency and fairness. When no deviations from procedures or the deviations identified did not impact the outcome, it is appropriate for the Grant Review Committee to uphold the Department’s notice of intent to award.

Purpose: Paragraph (2) authorizes the Grant Review Committee to remand applications to the Evaluation Panel for re-evaluation with written instructions that are in accordance with sections 7333.4 through 7333.10 when the Grant Review Committee determines that a procedural error occurred and can be corrected by the Evaluation Panel.

Necessity: Establishing an efficient, effective procedure for correcting procedural errors through re-evaluation by the Evaluation Panel is necessary to provide guidance for the Grant Review Committee, ensure consistency and fairness, and avoid undue delays in the award of funding intended to benefit people with disabilities.

Purpose: Paragraph (3) authorizes the Grant Review Committee to determine that a new Evaluation Panel must conduct the evaluation in accordance with sections 7333.6 through 7333.11 when the Grant Review Committee determines that a procedural error occurred and in the interest of timeliness or consistency, a new Evaluation Panel must conduct the evaluation. Examples where evaluation by a new Evaluation Panel may be appropriate, include where the members of the original Evaluation Panel are not available to re-evaluate in a timely manner or there are multiple or more complex procedural errors.

Necessity: Establishing an option in which a new Evaluation Panel must conduct a new evaluation is necessary to avoid undue delays in awarding funding and ensure consistency. The regulation also provides examples as guidance for the Grant Review Committee.

Purpose: Paragraph (4) authorizes the Grant Review Committee to evaluate the applications in accordance with sections 7333.6 through 7333.10 when the Grant Review Committee determines that a procedural error occurred and in the interest of timeliness or consistency the Grant Review Committee must conduct the evaluation.

Necessity: Establishing an option in which the Grant Review Panel will conduct a new evaluation is necessary for consistency and to avoid undue delays in awarding funding, as selecting a new Evaluation Panel, and conducting the evaluation takes time. The regulation also provides examples as guidance for the Grant Review Committee.

Purpose: Paragraph (5) authorizes the Grant Review Committee to determine that a new request for applications, evaluation, and intent to award in accordance with sections 7333.4 through 7333.10 are necessary to award the grant consistent with fair competition, clarity, or transparency. An example of when the Grant Review Panel may issue a decision as provided in paragraph (5) includes, but is not limited to, an error or omission of the Department or Evaluation Panel that cannot be corrected by the Evaluation Panel or Grant Review Committee through re-evaluation.

Necessity: This option is necessary to address situations where the error or omission cannot be corrected through a re-evaluation. There may also be situations where the Grant Review Committee determines that a decision in accordance with paragraph (5) is warranted to ensure fair competition, clarity, or transparency. The example is necessary to provide guidance to the Grant Review Committee.

Purpose: Subdivision (c) clarifies and makes specific the required elements for a Grant Review Committee decision.

Necessity: Establishing the required elements of a Grant Review Committee’s decision is necessary to provide guidance to the Grant Review Committee and ensure decisions are consistent and supported by relevant facts and regulations. In developing the regulation, the Department considered California Code of Regulations, title 9, section 7227.2(f)(11), governing proposed decisions for Business Enterprises Program for the Blind full evidentiary hearings.

Purpose: Paragraph (1) requires the name of the grant program and request for application number.

Necessity: This information is necessary to identify which grant and request for application the decision relates to.

Purpose: Paragraphs (2) and (3) require the name of the intended awardee and appellant, respectively.

Necessity: This information is necessary to identify the appeal.

Purpose: Paragraph (4) requires the action appealed.

Necessity: This information is necessary to identify the issue that is the subject of the decision.

Purpose: Paragraph (5) requires the findings of fact.

Necessity: This information is necessary for the Grant Review Committee to carry out its duties and is the basis for its decision.

Purpose: Paragraph (6) requires the decision and relevant facts and regulations supporting the decision.

Necessity: This information is necessary for the Grant Review Committee to carry out its duties and provides the rationale for the decision.

Purpose: Paragraph (7) requires the date the decision is rendered.

Necessity: This information is necessary to identity when the Grant Review Committee rendered its decision.

Purpose: Subdivision (d) clarifies and makes specific the individuals or entities that the Grant Review Committee’s decision must be sent to. These individuals or entities are the appellant, intended awardee, and Department staff.

Necessity: Requiring distribution of the decision to the parties promotes transparency.

**Section 7333.15. Decision Review**

Purpose: Subdivision (a) clarifies and makes specific an additional review process that the Grant Review Committee must undertake when its decision is to remand applications to the Evaluation Panel with instructions for re-evaluation.

Necessity: Establishing this additional level of review by the Grant Review Committee is necessary to provide an automatic administrative review to ensure that the Evaluation Panel complied with proposed section Grant Review Committee’s decision and written instructions for re-evaluation. This additional level of review will increase consistency and compliance with applicable regulations.

Purpose: Subdivision (b) provides that within 10 days, the Grant Review Committee will issue a written decision review.

Necessity: Requiring the Grant Review Committee to complete issue the written decision review within a specific period is necessary to support awarding the grant funding in a timely manner.

Purpose: Subdivision (c) requires the Department to email the decision review notice to all applicants impacted by the results of the re-evaluation and also requires posting of the notice on the Department’s website.

Necessity: Providing the written review decision to the impacted parties and posting on the Department’s website supports transparency.

Purpose: Subdivision (d) permits the Department to award the grant five (5) business days after the decision review notice is posted on the Department’s website.

Necessity: Authorizing the Department to award the grant five (5) business days after the decision review notice is posted supports timely award of grant funding.

**Section 7333.16. Final Action in an Appeal**

Purpose: This section clarifies and makes specific that the Grant Review Decision or decision review notice, where applicable, is the final action in an appeal.

Necessity: Identifying the final action in an appeal is necessary to inform the appellant, intended awardee, and others that the Grant Review Committee’s decision or decision review notice is final and no further administrative appeal process is available.

**Section 7334. Grant Management**

Purpose: This section is amended to delete the language in existing subdivisions (b) and (c), which requires the Department to establish and maintain a format to evaluate, prioritize, and award applications for grants based on enumerated priorities attributed to the U.S. Department of Education and inform applicants of the status of their applications in writing.

Necessity: Deleting this subdivision is necessary as proposed sections 7333.1 through 7333.19 provide detailed provisions for the Department’s basic competitive grant award process, including, but not limited to, the mechanism for announcing opportunities, evaluation, award, and informing applicants of the status of their applications and the process. The language relating to the priorities of the U.S. Department of Education is not necessary, as federal law, implementing regulations, and funding documents provide the U.S. Department of Education’s priorities in relation to grant programs funded with federal dollars. Further, the amendment to this section is necessary for clarification, as proposed section 7333.5(a)(1) through (4) requires information about the grant program, purpose and priorities of the grant program, source of funding, and legal citations to be included in requests for application.

Purpose: This section is amended to delete references to applicant appeals in existing subdivision (d).

Necessity: Deleting references to applicant appeals is necessary for clarification, as proposed sections 7333.14 through 7333.19 will provide detailed provisions for the Department’s basic competitive grant award process, including appeals. The existing appeal process in section 7334 will remain available for a grantee dissatisfied with a decision of the Department to discontinue grant funding after a grant award.

Renumbering of provisions within section 7334 is necessary to accommodate the amendments discussed above.

# STUDIES, REPORTS, OR DOCUMENTS RELIED UPON

The Department relied upon the following documents.

California State Auditor’s report 2017-129, titled “Department of Rehabilitation: Its Inadequate Guidance and Oversight of the Grant Process Led to Inconsistencies and Perceived Bias in Its Evaluations and Awards of Some Grants.” (<https://www.auditor.ca.gov/reports/2017-129/index.html>.)

Volume I of the State Contracting Manual, including sections 5.35 and 9.07 (<https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting?search=scm>)

# ECONOMIC IMPACT ASSESSMENT AND ANALYSIS

The Department awards grants on a competitive basis in relation to vocational rehabilitation and independent living services where permitted by law and regulation. Federal regulations require the Department to establish procedures for reviewing and approving grant applications and the award of grants (34 C.F.R. 76.770.) The proposed regulations amend the Department’s existing competitive grant award process in existing section 7334, which was promulgated in or before 2001. The proposed regulations clarify and describe the Department’s basic competitive grant award process. This process is intended to apply to all grants awarded by the Department on a competitive basis and is not specific to any of the Department’s grant programs. The proposed regulations will establish requirements for Evaluation Panel members to avoid disqualifying conflicts of interest; describe the evaluation process to ensure consistent, unbiased, and reliable evaluation and scoring; and establish the appeal process to ensure all applicants are afforded the opportunity to have the competitive grant award process reviewed by a neutral panel prior to the Department’s award of a grant. The proposed regulations establish the basic grant award process but do not establish, create, or expand any grant funding opportunities.

The Department currently has 59 agreements awarded through its competitive grant process—51 for blindness programs, six for traumatic brain injury programs, one for independent living systems, and one for loan of assistive technology. Applying for a Department grant on a competitive basis is voluntary and available to interested entities. Typically, grant applicants are required to have demonstrated experience with the provision of vocational rehabilitation, independent living, or other services to Californians with disabilities. Also, grant funding opportunities are generally limited to non-profit organizations, except for the assistive technology lending program, which also considered for-profit applicants with assistive technology device expertise.  The proposed regulations do not establish eligibility requirements specific to any of the Department’s grant programs.

There is no reason to believe that the proposed regulations establishing the basic competitive grant award process would eliminate jobs or existing businesses, create jobs or new businesses, or lead to the expansion of existing businesses. As stated above, the proposed regulations do not establish, create, or expand any grant funding opportunities or establish requirements that would create business or employment opportunities of potential applicants. To the Department’s knowledge, the Department’s existing regulation applicable to its competitive grant award process in section 7334, promulgated in or before 2001, has not resulted in the elimination of jobs or existing businesses, creation of jobs or new businesses, or expansion of business.

The Department has identified numerous benefits to adopting more detailed procedures for the review and approval of grant applications. These benefits include greater, clear guidance to staff, applicants, and other members of the public as to the Department’s competitive grant award process. The regulations will increase consistency and promote transparency in the competitive grant award process. Applicants who are well informed may result in fewer appeals that delay the award of funding to programs serving Californians with disabilities.

The Department concludes that it is:

(1) unlikely that the proposed regulations will eliminate any jobs;

(2) unlikely that the proposed regulations will create jobs;

(3) unlikely that the proposed regulations will create any new businesses;

(4) unlikely that the proposed regulations will eliminate any existing businesses;

(5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business with the state; and

(6) the benefits to the public, including potential grant applicants and other stakeholders, are increased confidence in a consistent, transparent process, opportunity to be better informed to respond to requests for applications, and timely awards and appeal decisions.

The proposed regulations will not adversely affect the health and welfare of California residents, worker safety, or the State’s environment.

# REASONABLE ALTERNATIVES TO THE REGULATION AND THE DEPARTMENT’S REASONS FOR REJECTING THOSE ALTERNATIVES

The Department has determined that there is no reasonable alternative to these regulations that would be more cost-effective and less burdensome to individuals and entities affected. While the proposed regulations impose some new obligations on grant applicants filing appeals, filing an appeal is voluntary, and the new obligations are minimal but necessary to ensure the Grant Review Committee’s decisions are thorough, well-balanced, and informed.

# REASONABLE ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department has determined that there is no reasonable alternative to these regulations that would lessen any adverse impact on small business. While the proposed regulations impose some new obligations on grant applicants filing appeals, filing an appeal is voluntary, and the new obligations are minimal but necessary to ensure the Grant Review Committee’s decisions are thorough, well-balanced, and informed.

# EVIDENCE SUPPORTS FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business. While the proposed regulations impose some new obligations on grant applicants filing appeals, filing an appeal is voluntary, and the new obligations are minimal but necessary to ensure the Grant Review Committee’s decisions are thorough, well-balanced, and informed. The proposed regulations will be of interest to a limited number of entities, possibly 100 entities, generally non-profits, that provide vocational rehabilitation and independent living services to Californians with disabilities. The Department has not identified any costs that applicants may incur because of the proposed regulations. The proposed rulemaking does not impose unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. Costs that applicants may incur in filing appeals are minimal and inherent to any competitive award process allowing for an appeal. The Department believes that the proposed regulations will result in better informed applicants and may reduce appeals, thereby reducing delays in awarding grant funding.

The Department’s existing regulation, section 7334, governing the competitive grant award process, has had no significant statewide adverse economic impact directly affecting business. Therefore, it is reasonable to conclude that the proposed regulations, which provide clarification and more detailed procedures, will not have a significant statewide adverse economic impact directly affecting business either.