**PROPOSED TEXT OF REGULATIONS**

**Title 9. Rehabilitative and Developmental Services**

**Division 3. Department of Rehabilitation**

All proposed changes to Division 3 of Title 9 of the California Code of Regulations are reflected below in underline for added text and strikeout for deleted text.

**7333.1. Competitive Grant Award Process.**

(a) The purpose of this section through 7333.16 is to describe the Department’s competitive grant award process for administrative review and evaluation of applications, notice of intent to award, and appeals.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.2. Applicability.**

Sections 7333.1 through 7333.16 are applicable to grants awarded by the Department on a competitive basis that are funded by state or federal funds, or a combination thereof.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.3. Definitions.**

(a) For the purpose of sections 7333.1 through 7333.16, the following definitions apply:

(1) “Appellant” means an applicant who files an appeal pursuant to section 7333.11.

(2) “Applicant” means an entity or person who submits an application for a grant awarded by the Department on a competitive basis.

(3) “Application” means a proposal submitted by an applicant for a grant awarded by the Department on a competitive basis.

(4) “Decision review notice” means the written statement of conclusions of the Grant Review Committee as provided in section 7333.15 after conducting a decision review of the results after re-evaluation by an Evaluation Panel to determine whether the Evaluation Panel complied with section 7333.8(b) and (c).

(5) 7333.3(a)(5) “Disqualifying conflict of interest” means any of the following:

(A) A public official at any level of state or local government shall not make, participate in making, or in any way attempt to use the public official’s official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest, as provided in Government Code section 87100.

(B) An individual shall not serve as an Evaluation Panel member or alternate, if the individual is a volunteer, recipient of services, or relative of an applicant.

(C) 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 as provided in Government Code section 11000.5.

(6) “Evaluation criteria” means the scoring guide developed by the Department to evaluate the responsiveness of applications. The evaluation criteria will include the elements to be scored, the number of points possible for each element, and descriptive criteria for evaluating each element. The elements to be scored will include, but may not be limited to:

(A) The extent to which the proposed activities fulfill the purpose, priorities, and requirements of the grant program.

(B) The relevance, effectiveness, feasibility, efficiency, and impact of the proposed activities.

(C) The capacity of the applicant to successfully administer the grant award.

(7) “Grant file” means an electronic or paper file, or combination thereof, where the Department will maintain records relating to a competitive grant award.

(8) “Grant program” or “competitive grant program” means a program in which funding is available for award by the Department through a competitive process to support or stimulate the accomplishment of a public purpose relating to the vocational rehabilitation, independent living, equality, or access for individuals with disabilities.

(9) “Incompatible activity” means any employment, activity, or enterprise which is inconsistent, incompatible, in conflict with, or inimical of the duties as an Evaluation Panel member. Activities and enterprises include, but are not limited to:

(A) Using the prestige, influence, or responsibilities of the Evaluation Panel for the Evaluation Panel member’s individual private gain or advantage or the private gain of another.

(B) Using, or having access to, confidential information available by virtue of the role of the Evaluation Panel member for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.

(C) Receiving or accepting money or any other consideration from anyone for the performance of the duties as an Evaluation Panel member.

(D) Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind in connection with the request for applications or an applicant under circumstances from which it reasonably could be substantiated that the gift was intended to influence the Evaluation Panel member or was intended as a reward for any actions performed by the individual as an Evaluation Panel member.

(10) “Intended awardee” means any applicant announced by the Department as the entity or person whom the Department intends to award a competitive grant pursuant to section 7333.10. The Department may award grants to multiple awardees.

(11) “Record” means 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, or symbols, or combinations thereof, and any document thereby created, regardless of the manner in which the document is stored.

(12) “Request for applications” means the record developed by the Department specific to each competitive grant program for which the Department intends to make a grant award, or multiple grant awards, notifying the public of the competitive grant award opportunity and application requirements.

(13) “Score sheet” means the record identifying the evaluation criteria upon which an Evaluation Panel member records their scores.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.4. Administrative Review.**

(a) Applications for a competitive grant award received will undergo an Administrative Review by the Department to determine whether eligibility and application requirements are met.

(b) Materials submitted with an application that are not required will not be shared with or considered by the Evaluation Panel. The Department will separate the materials that are not required from the application and maintain such materials in the Department’s grant file.

(c) Applications determined eligible and meeting application requirements will be evaluated by the Evaluation Panel in accordance with section 7333.8.

(d) Applications determined ineligible or not meeting application requirements will be disqualified, as provided in section 7333.5.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.5. Disqualification of an Application.**

(a) Grounds for disqualification of an application include the following:

(1) The applicant does not meet the eligibility requirements.

(2) The application does not meet the application requirements.

(3) The funding amount requested in the application exceeds the maximum award amount allowable.

(4) The application does not include all the required information.

(5) The application is submitted after the deadline for submission.

(b) Applicants will be notified in writing of the disqualification of their application, reasons for disqualification, and of the appeal rights and procedures, as provided in sections 7333.11 through 7333.16.

(1) The notice of disqualification will be sent by email to the applicant on the date that the Department posts the notice of intent to award as provided in section 7333.10(c).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.6. Evaluation Panel.**

(a) The Department will be solely responsible for selecting Evaluation Panel members who will evaluate all applications that are determined eligible and meet the application requirements pursuant to section 7333.4(c).

(b) The Evaluation Panel will consist of at least two (2) individuals.

(1) The Department may select alternates should one or more Evaluation Panel member be unable to participate in any part of the evaluation process due to inability or unwillingness to meet time commitments, a disqualifying conflict of interest as defined in section 7333.3(a)(5), engagement in an incompatible activity as defined in section 7333.3(a)(9), or breach of confidentiality as provided in section 7333.7.

(2) An alternate will not participate in any evaluations or evaluation discussions among the Evaluation Panel members unless they are selected by the Department as an Evaluation Panel member.

(3) If alternates are selected, all evaluation discussions among the Evaluation Panel must start from the beginning.

(c) To be considered by the Department for selection as an Evaluation Panel member or alternate, an individual must:

(1) Submit a biography, resume, or curriculum vitae highlighting their qualifications.

(2) Receive information from the Department about its grant process as provided in sections 7333.1 through 7333.16.
(3) Possess knowledge of or experience relevant to the grant program.

(4) Possess no disqualifying conflicts of interest, as defined in section 7333.3(a)(5).

(5) Engage in no incompatible activities, as defined in section 7333.3(a)(9).

(6) Possess knowledge of and agree to adhere to the confidentiality procedures, as provided in section 7333.7.

(d) Department employees and members of the public who meet the criteria identified in subdivision (c) of this section and are not disqualified under Government Code section 11000.5 may serve as Evaluation Panel members or alternates.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.7. Confidentiality.**

(a) Before a member of the public or Department employee participates as an Evaluation Panel member or alternate, they must agree in writing to the following:

(1) Maintain all information, including documents, received as an Evaluation Panel member in a confidential manner to avoid unauthorized individuals from learning of, viewing, accessing, or copying any information received as an Evaluation Panel member.

(2) Disclose information, including documents, received as an Evaluation Panel member and related to the grant program only to other Evaluation Panel members and the Department.

(3) Not retain any records received as an Evaluation Panel member after the Department requests the return of all records.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.8. Evaluation.**

(a) At the beginning of the evaluation, the Department will provide each Evaluation Panel member with the following:

(1) All applications that are determined eligible and meet the application requirements as provided in section 7333.4(c).

(2) The request for applications.

(b) The Evaluation Panel members will evaluate the applications in accordance with the evaluation criteria and score sheet identified in the request for applications.

(c) Each Evaluation Panel member will record their written scores and comments for each application evaluated on the score sheet.

(d) The Department will collect all score sheets provided in subdivision (c) of this section.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.9. Post-Evaluation Review.**

(a) Prior to the Department releasing and posting the notice of intent to award in accordance with section 7333.10(b) and (c), the Department will conduct a Post-Evaluation Review to determine whether the Department and the Evaluation Panel followed the procedures provided in section 7333.8.

(b) If the Department determines that the procedures provided in section 7333.8 were followed, the Department will proceed with the notice of intent to award following the Evaluation Panel’s results.

(c) If the Department determines that the procedures provided in section 7333.8 were not followed and that may have impacted the Evaluation Panel’s results, the Department will:

(1) If the error is procedural and can be corrected by the Evaluation Panel, return the applications to the Evaluation Panel for re-evaluation with written guidance on correcting the procedural error;

(2) If the procedural error cannot be corrected by the Evaluation Panel, set aside the Evaluation Panel’s results, take steps to prevent the procedural error from reoccurring, and convene a new Evaluation Panel in accordance with section 7333.6 to evaluate all applications from the beginning in accordance with section 7333.8; or

(3) If the procedural error cannot be corrected without amending or changing the request for applications, withdraw the request for applications and release a new request for applications consistent with sections 7333.1 through 7333.16, taking steps to prevent the procedural error from reoccurring.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

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

(a) The notice of intent to award will include:

(1) Name of grant program, identifying number for the request for applications and name of intended awardee.

(2) Date of notice of the intent to award.

(3) Duration of intended grant agreement.

(4) Information on how to access or request records relevant to the intended grant award.

(5) Appeal rights and procedures pursuant to sections 7333.11 through 7333.16.

(b) The notice of intent to award will be sent by email to the intended awardee.

(c) The notice of intent to award will be posted for at least thirty (30) calendar days prior to awarding the grant on the Department’s website.

(d) The Department cannot award the grant until the following occurs:

(1) The notice of intent to award is sent by email to the intended awardee and posted in accordance with subdivisions (b) and (c) of this section; and

(2) Any appeals submitted in accordance with section 7333.11 have been withdrawn, denied, or dismissed, or the Grant Review Committee has rendered a final decision as provided in section 7333.16.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.11. Applicant Appeals.**

(a) An applicant may file an appeal with the Department on the following grounds:

(1) Disqualification of their application.

(2) Error or omission by the Department or Evaluation Panel that may have changed the outcome of the intended grant award.

(b) Appeals must be in writing and received by the Department within thirty (30) calendar days of the posting of the notice of intent to award, as provided in section 7333.10(c).

(c) The appeal must include all the following:

(1) Name of the applicant and authorized representative submitting the appeal.

(2) Email address or addresses of the applicant where all notices relating to the appeal will be sent. The applicant may provide up to two (2) email addresses.

(3) 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.

(4) Information, including statements 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.

(d) Appeals not received timely will be denied. The Department will notify the applicant in writing of the denial and the reasons for the denial.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.12. Grant Review Committee.**

(a) The Grant Review Committee will render a decision on all timely appeals within forty-five (45) calendar days from the date the Department received the appeal.

(b) The Grant Review Committee will conduct the Grant Review based on written records without a hearing as provided in section 7333.13.

(c) The Chief Deputy Director or their designee will appoint up to three (3) state employees to serve on the Grant Review Committee.

(d) The Department will send by email a written notice to the appellant and intended awardee, which includes all the following information:

(1) Date the appeal was received.

(2) Action appealed.

(3) Names, titles, and qualifications of the Grant Review Committee members.

(4) Date by which the Grant Review Committee must render a written decision.

(5) Information on how to access or request copies of regulations, the request for applications, applications, evaluations, appeals, and other related records pursuant to the California Public Records Act (Gov. Code

§ 6250 et seq.).

(e) The Chief Deputy Director or their designee at their discretion may remove one or more members of the Grant Review Committee and appoint new members to ensure the Grant Review Committee renders a timely decision.

(1) The appellant and intended awardee will be notified of any changes to the Grant Review Committee members in writing.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.13. Grant Review Procedures.**

(a) The Grant Review Committee will send by email written notice to the appellant and intended awardee of the due dates for written submissions and the opportunity to submit further information in accordance with paragraphs (1) and (2) of this subdivision.

(1) In addition to the information submitted in accordance with section 7333.11(c)(4) and (5), the appellant may submit additional written statements and documentary information to support their position by the date specified by the Grant Review Committee as provided in subdivision (a) of this section.

(2) The intended awardee may submit a written statement and documentary information to respond to the appeal by the date specified by the Grant Review Committee as provided in subdivision (a) of this section.

(b) The Grant Review Committee will review:

(1) The appeal and documentation submitted in accordance with sections 7333.11(c)(4) and (5);

(2) All written statements and documentary information submitted in accordance with subdivision (a)(1) and (2) of this section; and

(3) Any other records the Grant Review Committee determines relevant to the appeal.

(c) Pursuant to subdivision (b)(3) of this section, the Grant Review Committee may send a letter by email to the appellant, intended awardee, or the Department staff requesting additional or clarifying information in relation to the appeal, including the date by which the response must be submitted to the Grant Review Committee for consideration.

(1) All parties to the appeal will receive a copy of any letter the Grant Review Committee sends in accordance with subdivision (c) of this section.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.14. Grant Review Committee Decision.**

(a) The Grant Review Committee will determine whether the action appealed did not follow the procedures provided in sections 7333.4 through 7333.11 and whether the outcome of the grant award was more likely than not changed as a result.

(b) The Grant Review Committee has the authority to:

(1) Uphold the notice intent to award when the Grant Review Committee determines that the procedures provided in sections 7333.4 through 7333.10 were followed or the outcome of the grant award was not changed because of deviations from the procedures.

(2) Remand the 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.

(3) 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 an 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.

(4) Evaluate the applications in accordance with sections 7333.6 through 7333.10 when the Grant Review Committee determines that a procedural error occurred and due to timeliness or consistency the Grant Review Committee must conduct the evaluation. Examples where an 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.

(5) 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.

(c) The Grant Review Committee will render a written decision, which will include:

(1) Name of the grant program and identifying number for the request for applications.

(2) Name of the Intended Awardee.

(3) Name of the Appellant.

(4) Action appealed.

(5) Findings of fact.

(6) Decision and relevant facts and regulations supporting the decision.

(7) Date the decision is rendered.

(d) A copy of the decision will be sent by email to the appellant, intended awardee, and Department staff.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7333.15. Decision Review.**

(a) Where the Grant Review Committee’s decision is to remand the applications in accordance with section 7333.14(b)(2), the Grant Review Committee will conduct a decision review of the results after re-evaluation by the Evaluation Panel to determine whether the Evaluation Panel complied with section 7333.8(b) and (c).

(b) Within ten (10) business days of receipt of the results of the re-evaluation by the Evaluation Panel, the Grant Review Committee will issue a written decision review notice, stating its conclusion.

(c) The Department will send by email a copy of the decision review notice to all applicants impacted by the results of the re-evaluation and post the decision review notice on the Department’s website.

(d) The Department may award the grant five (5) business days after the decision review notice is posted on the Department’s website.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

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

(a) The Grant Review Committee’s decision, or decision review notice if issued pursuant to section 7333.15, is final.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.

**7334. Grant Management.**

 (a) The Department, in conjunction with the U.S. Department of Education, shall establish priorities for the use of allotted funds each year. The list of priorities shall be made available upon request to potential applicants for funds.

~~(b) The Department shall establish and maintain a format to evaluate, prioritize, and award applications for grants on the basis of the following U.S. Department of Education priorities:~~

~~(1) The degree to which the applicant has responded to the annual departmental mission and objectives.~~

~~(2) Consumer involvement, affirmative action, and accessibility.~~

~~(3) Ability to meet district client needs.~~

~~(4) Adequacy of grant planning.~~

~~(5) Ability to administer grant funds.~~

~~(6) Adequacy of the current program base.~~

~~(c) Applicants shall be notified in writing of the action of the Department on their application for grants status.~~

~~(d) Applicant Appeals.~~

~~(1)~~ (b) Any ~~applicant for a grant~~ grantee who is dissatisfied with the decision of the Department relative to the ~~an application for or~~ discontinuation of grant funding may request a review by the Department. The request shall be in writing, clearly identify all issues in dispute, contain a full statement of the ~~applicant's~~ grantee’s position with respect to each issue, and contain pertinent facts and reasons in support of the ~~applicant's~~ grantee’s position. The request shall be submitted to the Department within 30 days of the date of the notification of action.

~~(2)~~ (1) The Department's Grant Review Committee reviews all such requests. The Committee shall be appointed by the Chief Deputy Director and shall consist of up to three Departmental employees, selected at the Chief Deputy Director’s discretion. The Committee shall review the request and shall notify the appellant in writing of the decision within 30 days of the date of the request.

~~(3)~~ (2) The decision of the Grant Review Committee is final.

~~(e)~~ (c) Grants shall be managed by the Department in accordance with:

(1) The Office of Management and Budget Circulars for Administration of Grants.

(2) The Department's Grants Management Handbook.

(3) The terms of the grant between the Department and the facility.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 C.F.R. 76.770.