



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 8, 2016

The Honorable Richard C. Shelby
United States Senate
Washington, DC 20510

Dear Senator Shelby:

This supplements the Department of Justice's (the Department) May 2, 2016, letter to you regarding compliance with applicable federal law by certain Department grantees.

At that time, we notified you that we had been in contact with the Department's Inspector General (IG) to bring to his attention recent 8 U.S.C. § 1373 (Section 1373) compliance allegations we had received related to this subject. The Department subsequently provided the IG information necessary for him to conduct a review, and on May 31, 2016, the IG provided a memorandum to the Department describing the results of his review. On July 7, 2016, the Department responded to the IG.

In addition to providing information to the IG, in our correspondence of May 2, 2016, we also indicated that we would emphasize to prospective applicants the importance and requirement of adherence to all applicable federal laws under the FY 2016 Edward Byrne Justice Assistance Grant (JAG) Program and State Criminal Alien Assistance Program (SCAAP).

Consistent with our commitment to you and the recommendations received from the IG, on July 7, 2016, the Department's Office of Justice Programs (OJP)—which has determined that Section 1373 is an applicable federal law for the purposes of JAG and SCAAP—provided the enclosed guidance on the requirements of Section 1373 to all such recipients.

To ensure that grantees comply with Section 1373 and all other applicable federal law, OJP already requires all grant applicants electronically to acknowledge and accept the conditions contained in two documents—“General Assurances” and “General Certifications”—as preconditions to a grant award. The General Assurances document (enclosed) currently states: “The applicant hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines, and requirements” These assurances and certifications are required for participation in the SCAAP repayment program as well.

In addition to clarifying the meaning of Section 1373, the guidance includes responses to other questions received from Bureau of Justice Assistance grantees regarding compliance with Section 1373. Additionally, OJP has requested that recipients ensure that the Department's guidance is clearly communicated to their personnel and subrecipients, as well as other relevant

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partners and/or other entities. We believe that these steps will help ensure that recipients are complying with Section 1373.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. J. Kadzik". The signature is stylized with a large initial "P" and a long horizontal stroke.

Peter J. Kadzik
Assistant Attorney General

Enclosures

**OFFICE OF JUSTICE PROGRAMS GUIDANCE REGARDING
COMPLIANCE WITH 8 U.S.C. § 1373**

1. Q. *What does 8 U.S.C. § 1373 require?*

A. Title 8, United States Code, Section 1373 (Section 1373) addresses the exchange of information regarding citizenship and immigration status among federal, state, and local government entities and officials. Subsection (a) prevents federal, state and local government entities and officials from “prohibit[ing] or in any way restrict[ing]” government officials or entities from sending to, or receiving from, federal immigration officers information concerning an individual’s citizenship or immigration status. Subsection (b) provides that no person or agency may “prohibit, or in any way restrict,” a federal, state, or local government entity from (1) sending to, or requesting or receiving from, federal immigration officers information regarding an individual’s immigration status, (2) maintaining such information, or (3) exchanging such information with any other federal, state, or local government entity. Section 1373 does not impose on states and localities the affirmative obligation to collect information from private individuals regarding their immigration status, nor does it require that states and localities take specific actions upon obtaining such information. Rather, the statute prohibits government entities and officials from taking action to prohibit or in any way restrict the maintenance or intergovernmental exchange of such information, including through written or unwritten policies or practices.

Your personnel must be informed that notwithstanding any state or local policies to the contrary, federal law does not allow any government entity or official to prohibit the sending or receiving of information about an individual’s citizenship or immigration status with any federal, state or local government entity and officials.

2. Q. *May a state make a subgrant to a city that the state knows to be violating an applicable law or regulation (e.g. Section 1373), or a programmatic requirement?*

A. No. A JAG grantee is required to assure and certify compliance with all applicable federal statutes, including Section 1373, as well as all applicable federal regulations, policies, guidelines and requirements. This requirement passes through to any subgrants that may be made and to any subgrantees that receive funds under the grant.

3. Q. *Is there a specific report or source BJA is using to determine whether a jurisdiction has violated an applicable Federal law (e.g. Section 1373)?*

A. The Office of Justice Programs (OJP) will take seriously credible evidence of a violation of applicable Federal law, including a violation of Section 1373, from any source. In the ordinary course, OJP will refer such evidence to the Department of Justice’s Office of the Inspector General for appropriate action.

4. Q. *How would a determination that a subgrantee is in violation of federal law affect the state's designation and ability to receive future awards?*

A. A grantee is responsible to the federal government for the duration of the award. As the primary recipient of the award, the grantee is responsible for ensuring that subgrantees assure and certify compliance with federal program and grant requirements, laws, or regulations (e.g. Section 1373). If a grantee or subgrantee has policies or practices in effect that violate Section 1373, the grantee or subgrantee will be given a reasonable amount of time to remedy or clarify such policies to ensure compliance with applicable law. Failure to remedy any violations could result in the withholding of grant funds or ineligibility for future OJP grants or subgrants, or other administrative, civil, or criminal penalties, as appropriate. Our goal is to ensure that JAG grantees and subgrantees are in compliance with all applicable laws and regulations, including Section 1373, not to withhold vitally important criminal justice funding from states and localities.

5. Q. *Does the "JAG Sanctuary Policy Guidance" notice apply to all active grants?*

A. The Policy Guidance applies to all JAG grantees and subgrantees.

6. Q. *What should a state be doing to ensure that subgrantees are complying with the legal requirements for receiving JAG funds?*

A. The state must comply with all of the requirements of 2 C.F.R. § 200.331. See also Section 3.14 (Subrecipient Monitoring) of the Department of Justice Financial Guide.

7. Q. *The "JAG Sanctuary Policy Guidance" cited Section 1373. Are there other components of Title 8 of the United States Code that are required for compliance?*

A. All grantees are required to assure and certify compliance with all applicable federal statutes, regulations, policies, guidelines, and requirements. States may wish to consult with their legal counsel if they have any questions or concerns as to the scope of this requirement.



STANDARD ASSURANCES

The Applicant hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including 2 C.F.R. Part 2800 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards by the Department of Justice), and Ex. Order 12372 (intergovernmental review of federal programs). The applicant also specifically assures and certifies that:

1. It has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.
2. It will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
3. It will give the awarding agency or the Government Accountability Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance.
4. It will comply with all lawful requirements imposed by the awarding agency, specifically including any applicable regulations, such as 28 C.F.R. pts. 18, 22, 23, 30, 35, 38, 42, 61, and 63, and the award term in 2 C.F.R. § 175.15(b).
5. It will assist the awarding agency (if necessary) in assuring compliance with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Ex. Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).
6. It will comply (and will require any subrecipients or contractors to comply) with any applicable nondiscrimination provisions, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Violence Against Women Act (42 U.S.C. § 13925(b)(13)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Indian Civil Rights Act (25 U.S.C. §§ 1301-1303); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); and the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07). It will also comply with Ex. Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations; Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations; and the DOJ implementing regulations at 28 C.F.R. Part 38.
7. If a governmental entity—
 - a) it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. § 4601 et seq.), which govern the treatment of persons displaced as a result of federal and federally-assisted programs; and
 - b) it will comply with requirements of 5 U.S.C. §§ 1501-08 and §§ 7324-28, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

Signature _____

Date _____