

Questions & Answers on Specific Requirements related to Criminal Alien Law Enforcement for Fiscal Year 2017 and 2018 OJP Grant Programs

- 1. Which Fiscal Year (FY) 2017 OJP grant programs may or do have specific award requirements related to criminal alien law enforcement?**
 - BJA Justice Assistance Grant (JAG) program, State and Local
- 2. Which Fiscal Year (FY) 2018 OJP grant programs may or do have specific award requirements related to criminal alien law enforcement?**
 - BJA Justice Assistance Grant (JAG) program, State and Local
 - BJA Supporting Innovation: Field-Initiated Programs to Improve Public Safety
 - OJJDP Gang Suppression: A Law Enforcement and Prosecutorial Approach to Address Gang Recruitment of Unaccompanied Alien Children
 - OJJDP Gang Suppression Planning Grant Program
 - BJA Project Safe Neighborhoods (PSN)
 - BJA Local Law Enforcement Crime Gun Intelligence Center Integration Initiative
 - BJA Strategies for Policing Innovation (SPI) program
 - BJA Innovations in Community-Based Crime Reduction (CBCR) program
 - OJJDP Title II, Part B Formula Program
- 3. Are the award requirements related to criminal alien law enforcement the same for all listed OJP grant programs?**

No. Although many award requirements are repeated for various grant programs, there are important differences. Carefully review the relevant award conditions, as well as relevant language in solicitation(s), notices, and Q&As provided below.

- 4. A number of federal statutes are referenced in the award requirements related to criminal alien law enforcement for the various grant programs. Where can I find the text of each statute?**

Links to each referenced statute (as of Nov. 1, 2018) are provided below:

- [8 U.S.C. § 1373](#)

- [8 U.S.C. § 1644](#)
- [8 U.S.C. § 1226\(a\) & \(c\)](#)
- [8 U.S.C. § 1231\(a\)\(4\)](#)
- [8 U.S.C. § 1324\(a\)](#)
- [8 U.S.C. § 1357\(a\)](#)
- [8 U.S.C. § 1366\(1\) & \(3\)](#)

5. Many of the affected programs have award requirements for applicants, recipients, and/or subrecipients to submit certain certifications related to criminal alien law enforcement. Where can I access those forms?

Relevant forms (as updated from time to time) for the affected programs may be accessed at this website: <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>

6. Certain FY 2017 and FY 2018 award conditions that are related to criminal alien law enforcement specifically reference “program or activity.” What does that term mean?

Title VI of the Civil Rights Act of 1964 defines the term “program or activity.” *See* 42 U.S.C. § 2000d-4a; 28 C.F.R. § 42.102(d)(1) (implementing regulation). For decades, government entities in receipt of federal grant funds have been required, as a condition of receipt of such funds, to ensure that any “program or activity” receiving federal financial assistance under any grant award complies with Title VI. The scope and meaning of the term “program or activity” as set forth in the relevant FY 2017 and FY 2018 award conditions is the same as that under Title VI and its implementing regulation. Information provided at the following link also may be helpful: <https://www.justice.gov/crt/fcs/T6manual>.

7. Certain FY 2017 and FY 2018 award conditions that are related to criminal alien law enforcement provide that requirements pass through to all subawards to state and local government entities, and “public” institutions of higher education. Do any of these requirements pass through to subawards to non-profit organizations or other subrecipients?

With three exceptions, noted below, the award requirements/conditions that relate to criminal alien law enforcement in FY 2017 and FY 2018 OJP awards pass through to subawards to governmental entities (including public institutions of higher education). Such requirements should not affect subawards to tribal governments, nonprofit organizations, private institutions of higher education, or other non-governmental entities. If however, any further tiers of subawards are made BY tribal governments, nonprofit organizations, private institutions of higher education, or other non-governmental entities TO any governmental entities (including public institutions of higher education), the conditions and requirements should be included in these lower-tier subawards.

This answer applies to the following **FY 2018** award conditions:

- Noninterference (within the funded "program or activity") with federal law enforcement: 8 U.S.C. 1373 and 1644; ongoing compliance
- Noninterference (within the funded "program or activity") with federal law enforcement: 8 U.S.C. 1373; ongoing compliance
- Authority to obligate award funds contingent on noninterference (within the funded "program or activity") with federal law enforcement (8 U.S.C. 1373 and 1644); unallowable costs; notification
- Authority to obligate award funds contingent on noninterference (within the funded "program or activity") with federal law enforcement (8 U.S.C. 1373); unallowable costs; notification
- Employment eligibility verification for hiring under the award

This answer applies to the following **FY 2017** award conditions:

- Ongoing compliance with 8 U.S.C. 1373 is required
- Authority to obligate award funds contingent on compliance with 8 U.S.C. 1373; unallowable costs; obligation to notify
- Required State-level rules or practices related to aliens; allowable costs
- Required local-government-level rules or practices related to aliens; allowable costs

Note: the following award conditions, which are included in some FY 2018 awards, must be passed through to all subrecipients, whether governmental entities or not.

- Noninterference (within the funded "program or activity") with federal law enforcement: No public disclosure of certain law enforcement sensitive information
- Noninterference (within the funded "program or activity") with federal law enforcement: Interrogation of certain aliens
- Noninterference (within the funded "program or activity") with federal law enforcement: Notice of scheduled release

8. Certain FY 2017 and FY 2018 award conditions that relate to criminal alien law enforcement specifically reference “public’ institution[s] of higher education.” What does that term mean?

Pursuant to the terms of the relevant conditions (see immediately below), a "public" institution of higher education is defined as an institution of higher education that is owned, controlled, or directly funded (in whole or in substantial part) by a State or local government. An “institution of higher education” has the meaning set forth in 20 U.S.C. § 1001. As a general matter, an “institution of higher education” is likely to be a college, university, or other post-secondary education setting, and local elementary or high schools are not likely to fall within the definition of “institution of higher education.”

This definition applies to the following **FY 2018** award conditions:

These FAQs are for reference only and to assist States and units of local government. These FAQs do not supersede any conflicting guidance provided in the relevant solicitations or grant award documents.

- Noninterference (within the funded "program or activity") with federal law enforcement: 8 U.S.C. 1373 and 1644; ongoing compliance
- Noninterference (within the funded "program or activity") with federal law enforcement: 8 U.S.C. 1373; ongoing compliance
- Authority to obligate award funds contingent on noninterference (within the funded "program or activity") with federal law enforcement (8 U.S.C. 1373 and 1644); unallowable costs; notification
- Authority to obligate award funds contingent on noninterference (within the funded "program or activity") with federal law enforcement (8 U.S.C. 1373); unallowable costs; notification
- Requirement to collect certain information from subrecipients
- PSN – Subrecipient DHS question requirement

This definition applies to the following **FY 2017** award conditions:

- Ongoing compliance with 8 U.S.C. 1373 is required
- Authority to obligate award funds contingent on compliance with 8 U.S.C. 1373; unallowable costs; obligation to notify

Q&A specific to FY 2017 JAG State and Local

1. **Have there been any revisions to the “Certification of Compliance with 8 U.S.C. § 1373”? If so, how does that affect applicant requirements?**

Yes. The form was revised on August 10, 2018. Applicants may submit either of the FY 2017 versions of the “Certification of Compliance with 8 U.S.C. § 1373” to satisfy the requirement. Applicants and recipients that have already submitted a properly-executed “Certification of Compliance with 8 U.S.C. § 1373” may, but need not, submit a new “Certification of Compliance with 8 U.S.C. § 1373.” The Department will consider the form executed most recently to supersede any previously-executed “Certification of Compliance with 8 U.S.C. § 1373.”

2. **What are the differences between the original and revised versions of the “Certification of Compliance with 8 U.S.C. § 1373” and the “Certifications and Assurances by the Chief Executive of the Applicant government”?**

Redline documents, which show the changes made to the original version of the “Certification of Compliance with 8 U.S.C. § 1373” and the “Certifications and Assurances by the Chief Executive of the Applicant government,” are [available here](#). These documents are being provided for informational purposes only, and should not be submitted to meet the certification requirement.

3. **What if an applicant did not submit, by the application deadline, the required “Certification of Compliance with 8 U.S.C. § 1373,” properly executed by the chief legal officer of the applicant jurisdiction?**

NOTE: The following answer does NOT apply to any instance where there is binding court order to the contrary, or where the Department has agreed to something else with a particular party, or where the Department has indicated something else by written notice (see, e.g., <https://www.bja.gov/jag/award-conditions.html>).

An applicant State or unit of local government (not an Indian tribe) that did not submit (by the application deadline) the required “Certification of Compliance with 8 U.S.C. § 1373,” properly executed by the chief legal officer (e.g., the Attorney General) of the applicant jurisdiction has not made a valid award acceptance, as there is no valid award acceptance, **unless and until** a properly-executed certification by the applicant jurisdiction’s chief legal officer is received by OJP. That is, the certification must be submitted on or before the day the jurisdiction submits an executed award document. If the applicant submits an executed award document before the day it submits the executed “Certification of Compliance with 8 U.S.C. § 1373,” the executed award document will be **void and invalid** to accept the award.

If an initial award-acceptance submission by the recipient is invalid, once the applicant does submit the necessary “Certification of Compliance with 8 U.S.C. § 1373,” it may submit a fully-executed award document executed by the applicant on or after the date of that certification.

4. **The “Certification of Compliance with 8 U.S.C. § 1373,” at paragraph 5, references a “diligent inquiry and review.” What is the expectation of how such an inquiry and review should be undertaken?**

As is made clear in the revised “Certification of Compliance with 8 U.S.C. § 1373,” the inquiry and review of each “program or activity” receiving federal financial assistance under the award relates only to those programs or activities to be carried out by the applicant jurisdiction (including any agencies of the jurisdiction), and does not relate to programs or activities carried out through subaward. For example, before signing the “Certification of Compliance with 8 U.S.C. § 1373,” the Chief Legal Officer of a State should review each “program or activity” to be funded by the State applicant and all State agencies to be funded under the award, but need not consider any “program or activity” to be funded by a city receiving a subaward under the award.

Further, the required “diligent inquiry and review” refers to an “inquiry and review” that is fair, reasonable, and appropriate, under the circumstances, in obtaining and evaluating any relevant information. That is, the Chief Legal Officer should ensure that the “inquiry and review” is conducted in the places where one would reasonably expect to find relevant information.

5. **The “Certification of Compliance with 8 U.S.C. § 1373,” at paragraph 6, references a “jurisdiction,” as well as “any entity, agency, or official of the jurisdiction.” If the applicant jurisdiction is a State, is “any entity, agency, or official of the jurisdiction” limited to State-level entities, agencies, and officials?**

Yes. Where the applicant is a State, the reference to “jurisdiction,” as well as “any entity, agency, or official of the jurisdiction” refers to the State itself and to State-level entities, agencies, and officials, but not to localities within the State.

6. **Must a recipient of an FY 2017 JAG award require its subrecipients to submit a “Certification of Compliance with 8 U.S.C. § 1373”? Must a recipient submit to OJP all the certifications from subrecipients?**

NOTE: The following answer does NOT apply to any instance where there is binding court order to the contrary, or where the Department has agreed to something else with a particular party, or where the Department has indicated something else by written notice (see, e.g., <https://www.bja.gov/jag/award-conditions.html>).

An award condition on FY 2017 JAG awards requires each recipient to obtain a properly-executed “Certification of Compliance with 8 U.S.C. § 1373” **before** it makes a subaward to a unit of local government or to a public institution of higher education. This requirement will apply to **all** subawards (at any tier) to units of local government or public institutions of higher education, including subawards required or authorized by statute, but it will **not** apply to subawards to Indian tribes.

The recipient will be required to obtain properly-executed certifications that use the appropriate form as posted by OJP on the OJP website. (The forms (as updated from time to time) will be posted and available for download at <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>) As with other records pertinent to the award, the recipient must retain these subrecipient certifications and make them available for review and inspection by DOJ (or GAO) for monitoring, enforcement, or other appropriate purposes. OJP does **not** intend to impose any general requirement that all FY 2017 JAG recipients submit all such certifications to OJP, but it may require submission of certifications in appropriate circumstances (e.g., for monitoring purposes).

- 7. Are Indian tribes required to submit the “Certification of Compliance with 8 U.S.C. § 1373” by a jurisdiction’s chief legal officer as part of a JAG application? Will recipients be required to obtain a “Certification of Compliance with 8 U.S.C. § 1373” from an Indian tribe prior to making a subaward to an Indian tribe?**

No. For purposes of the FY 2017 JAG requirements regarding a “Certification of Compliance with 8 U.S.C. § 1373,” an Indian tribe is not considered a “State or local government entity or -agency.” The requirement that a recipient obtain a properly-executed “Certification of Compliance with 8 U.S.C. § 1373” from each prospective subrecipient that is a local government or public institution of higher education, therefore, does not apply to Indian tribes.

- 8. Must the fiscal agent applying for an FY 2017 JAG award on behalf of jurisdictions in a “disparate” group require each disparate jurisdiction to submit a “Certification of Compliance with 8 U.S.C. § 1373”? Must the fiscal agent submit to OJP all the certifications from each disparate jurisdiction?**

NOTE: The following answer does NOT apply to any instance where there is binding court order to the contrary, or where the Department has agreed to something else with a particular party, or where the Department has indicated something else by written notice (see, *e.g.*, <https://www.bja.gov/jag/award-conditions.html>).

An award condition on FY 2017 JAG awards requires each fiscal agent applying on behalf of a disparate group to obtain a properly-executed “Certification of Compliance with 8 U.S.C. § 1373” **before** it makes a subaward to a disparate jurisdiction.

The fiscal agent will be required to obtain properly-executed certifications that use the appropriate form as posted by OJP on the OJP website. (The forms (as updated from time to time) will be posted and available for download at <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>) As with other records, pertinent to the award, the fiscal agent must retain these subrecipient certifications and make them available for review and inspection by DOJ (or GAO) for monitoring, enforcement, or other appropriate purposes. OJP does **not** intend to impose any general requirement that all FY 2017 JAG fiscal agents applying on behalf of a disparate group submit all such certifications to OJP, but it may require submission of certifications in appropriate circumstances (*e.g.*, for monitoring purposes).

- 9. Will OJP need to review a “Certification of Compliance with 8 U.S.C. § 1373” from a prospective subrecipient before a JAG recipient may make the subaward?**

The recipient will have the primary responsibility for reviewing the “Certification of Compliance with 8 U.S.C. § 1373” from a proposed subrecipient, including whether it is properly executed using the appropriate OJP form. As stated above, OJP does not intend to impose any general requirement that all FY 2017 JAG recipients submit all such certifications to OJP for review.

- 10. Must State recipients collect a new “Certification of Compliance with 8 U.S.C. § 1373” from the State’s Chief Legal Office before making a subaward to another State agency?**

NOTE: The following answer does NOT apply to any instance where there is binding court order to the contrary, or where the Department has agreed to something else with a particular party, or where

the Department has indicated something else by written notice (see, *e.g.*, <https://www.bja.gov/jag/award-conditions.html>).

A new “Certification of Compliance with 8 U.S.C. § 1373” would be required only if the “program or activity” to be funded under the proposed subaward was not considered by the State’s Chief Legal Officer when the State’s “Certification of Compliance with 8 U.S.C. § 1373” was initially signed. In many cases, however, we would expect that the full range of possible projects under the award was already considered by the State’s Chief Legal Officer, and, thus, a new Certification, specific to each subaward to a State agency, would not be needed.

11. May a jurisdiction’s Chief Legal Officer delegate the task of signing the “Certification of Compliance with 8 U.S.C. § 1373” to another individual?

The “Certification of Compliance with 8 U.S.C. § 1373” must be signed by the jurisdiction’s chief legal officer, who may not delegate, assign, or designate the task to another.

12. Who may sign the “Certification of Compliance with 8 U.S.C. § 1373” as the Chief Legal Officer (CLO) for State applicants? May the Chief Counsel to a State Governor sign as the CLO?

The “Certification of Compliance with 8 U.S.C. § 1373” must be signed by the jurisdiction’s chief legal officer. For purposes of this certification requirement, each State has only one “chief legal officer of the State,” and he or she must be the one to review and execute the “Certification of Compliance with 8 U.S.C. § 1373.” The chief legal officer of the State is the individual who is the chief legal advisor to the State as a whole, and not someone who is the chief legal advisor for the chief executive of the State, or chief legal advisor for a particular branch or component of the State government. Someone who is chief counsel to a State Governor, but not chief counsel for the State as a whole, therefore, may not properly execute the “Certification of Compliance with 8 U.S.C. § 1373.” State “Attorney General” typically will be the title of the chief legal officer.

13. Who may sign the “Certification of Compliance with 8 U.S.C. § 1373” as the Chief Legal Officer for local-government applicants?

The “Certification of Compliance with 8 U.S.C. § 1373” must be signed by the jurisdiction’s chief legal officer. Much as with a State, each unit of local government typically will have only one chief legal officer, and he or she must be the one to review and execute the “Certification of Compliance with 8 U.S.C. § 1373.” The chief legal officer is the individual who is the chief legal advisor to the local government as a whole, and not someone who is the chief legal advisor for the chief executive of the local government, or chief legal advisor for a particular branch or component of the local government.

14. May a jurisdiction’s Chief Executive Officer delegate the task of signing the “Certifications and Assurances by the Chief Executive of the Applicant Government” to another individual?

The “Certifications and Assurances by the Chief Executive of the Applicant Government” must be signed by the jurisdiction’s chief executive officer, who may not delegate, assign, or designate the task to another.

15. Who may sign the “Certifications and Assurances by the Chief Executive of the Applicant Government” as the Chief Executive Officer for State or Unit of local government applicants?

These FAQs are for reference only and to assist States and units of local government. These FAQs do not supersede any conflicting guidance provided in the relevant solicitations or grant award documents.

The “Certifications and Assurances by the Chief Executive of the Applicant Government” must be signed by the jurisdiction’s chief executive. The Chief Executive is the person who has the ultimate executive authority for the jurisdiction. Further, as set forth in the certification itself, the Chief Executive is the person that has the authority to make representations on behalf of the unit of local government. Typically, the Chief Executive is the highest elected official of the jurisdiction (e.g. Governor, Mayor, or County Board Chair).

16. Has the text of the FY 2017 JAG award conditions been made available?

The Office of Justice Programs (OJP) has transmitted "award packages" to nearly all prospective recipients of awards under the FY 2017 Edward Byrne Justice Assistance Grant ("JAG") Program. Each such OJP award package includes a lengthy award document ("grant" document) that sets out, among other things, the various conditions that will apply to the award, if the prospective recipient chooses to accept the offer of an award. OJP is posting here (<https://www.bja.gov/Jag/SampleAwardDocument>), as a sample, an award document that OJP has sent to prospective recipients under the FY 2017 JAG – Local program for review and acceptance. (Certain identifying information has been redacted.)

17. What are DOJ’s expectations for subrecipient monitoring with respect to FY 2017 JAG award conditions 55 and 56?

FY 2017 JAG awards include two award conditions entitled “Required State-level rules or practices related to aliens; allowable costs” (condition 55) and “Required local-government-level rules or practices related to aliens; allowable costs” (condition 56). Each specifies that grant recipients must “monitor subrecipient compliance with the requirements of this condition.” In general, the purpose of all subrecipient monitoring is to ensure that the subaward is being used for the authorized purpose, in compliance with the federal program and grant requirements, laws, and regulations, and the subaward performance goals are achieved. DOJ expects that a grant recipient would fold the subrecipient monitoring for these award conditions into its normal grant monitoring practices, and does not expect that more (or different, in principle) kinds of monitoring would be required for these award conditions than (or from) the monitoring required or expected for other award conditions. Accordingly, DOJ would expect the grant recipient to make an appropriate inquiry regarding compliance upon the recipient’s learning of credible allegations of noncompliance with these award conditions, just as DOJ would expect the grant recipient to make an appropriate inquiry regarding compliance with any other award conditions upon the recipient’s learning of a credible allegation of noncompliance. But it is not expected that grant recipients would **proactively** make determinations regarding whether a subrecipient or proposed subrecipient complies with the terms of the award condition; instead, for example, a recipient may wish to request certifications regarding compliance with these award conditions to accompany regular financial or programmatic reports from subrecipients.

18. Is an internal memorandum sufficient to meet the requirement for a *statute, ordinance, rule, regulation, policy, or practice*, as required in award conditions 55 and 56?

FY 2017 JAG awards include two award conditions entitled “Required State-level rules or practices related to aliens; allowable costs” (condition 55) and “Required local-government-level rules or practices related to aliens; allowable costs” (condition 56). The former requires (with respect to any “program or activity” funded under the award) that there be a

“State statute, or a State rule, -regulation, -policy, or –practice” regarding two topics (the details of which are set forth in the conditions, but generally on the topics of access and notice). Similarly, the latter condition requires (with respect to any “program or activity” funded under the award) that there be a “local ordinance, -rule, -regulation, -policy, or -practice” regarding the same two topics. There is no requirement for compliant State policies or Local policies to be written in any particular form, and, as such, an internal policy memorandum could be sufficient to demonstrate a State policy or a local policy. Notably, there is no requirement for a writing at all, if a State practice or local practice could be demonstrated without one. Regardless of the form, the statute, ordinance, rule, regulation, policy, or practice should be one that is actually implemented and enforced.

19. One of the requirements of FY 2017 JAG award conditions 55 and 56 relates to ensuring access to correctional facilities for U.S. agents. Must such access be unregulated or unlimited?

No. DOJ fully expects that a State or local government would have reasonable procedures governing how such access is granted, so that normal and appropriate correctional-facility operations are not undermined.

20. One of the requirements of FY 2017 JAG award conditions 55 and 56 relates to providing notice to the Department of Homeland Security (DHS) prior to release of particular aliens. How broad is that requirement?

First, it is important to note that nothing whatsoever in these award conditions requires that individuals be held in correctional facilities any longer than they would be held in the absence of these award conditions. Moreover, the notice referenced in these award conditions need only be given “as early as practicable.” For example, in a situation where DHS has requested 48 hours advance notice of the release of a particular alien, but a court has ordered the release of that individual within 24 hours, a policy would satisfy these award conditions if it required notice to DHS as early as practicable following the court order. Finally, these award conditions relate to requests by DHS regarding the release date and time for “particular aliens,” and should not be understood to require proactive advance notice to DHS regarding the release of aliens whom DHS has not asked about.

21. Will requirements related to 8 U.S.C. § 1373 affect FY 2017 SORNA and PREA reallocation awards?

The relevant FY 2017 solicitations did not require applicants to submit a “Certification of Compliance with 8 U.S.C. § 1373” when applying for SORNA or PREA reallocation awards.

22. Where can I find answers to questions about FY17 JAG that are not related to Criminal Alien Law Enforcement?

Answers to many questions related to the JAG program may be found here:
<https://www.bja.gov/Funding/JAGFAQ.pdf>.

Q&A specific to FY 2018 OJJDP Title II, Part B Formula Program

- 1. Is a state that receives a FY 2018 Title II, Part B Formula Grant award from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) required to submit a certification of compliance with 8 U.S.C. 1373?**

No. States receiving FY 2018 Title II formula grant funding from OJJDP are NOT required to submit any certifications.

- 2. Must a recipient of an FY 2018 Title II, Part B Formula Grant award require its subrecipients to submit a “Certification of Compliance with 8 U.S.C. § 1373”? Must a recipient submit to OJP all the certifications from subrecipients?**

NOTE: The following answer does NOT apply to any instance where there is binding court order to the contrary, or where the Department has agreed to something else with a particular party, or where the Department has indicated something else by written notice.

An award condition on each FY 2018 Title II, Part B grant award requires the State to obtain a properly-executed “Certification of Compliance with 8 U.S.C. § 1373” **before** it makes a subaward to a State, unit of local government or to a public institution of higher education. This requirement will apply to **all** subawards (at any tier) to States, units of local government or public institutions of higher education, including subawards required or authorized by statute. The certification must be signed by the chief legal officer of the government or educational institution receiving the subaward. The recipient will be required to obtain properly-executed certifications that use the appropriate form as posted by OJP on the OJP website. (The forms (as updated from time to time) will be posted and available for download at <https://ojp.gov/funding/Explore/SampleCertifications-8USC1373.htm>, (see “**Forms for certifications from prospective subrecipients under FY 2018 Title II Formula Grants (‘Title II’) Program (OJJDP)**”). As with other records pertinent to the award, the recipient must retain these subrecipient certifications and make them available for review and inspection by DOJ (or GAO) for monitoring, enforcement, or other appropriate purposes. OJP does **not** intend to impose any general requirement that all FY 2018 Title II recipients submit all such certifications to OJP, but it may require submission of certifications in appropriate circumstances (*e.g.*, for monitoring purposes).

- 3. Will OJP need to review a “Certification of Compliance with 8 U.S.C. § 1373” from a prospective subrecipient before a Title II recipient may make the subaward?**

NOTE: The following answer does NOT apply to any instance where there is binding court order to the contrary, or where the Department has agreed to something else with a particular party, or where the Department has indicated something else by written notice.

The recipient will have the primary responsibility for reviewing the “Certification of Compliance with 8 U.S.C. § 1373” from a proposed subrecipient, including whether it is properly executed using the appropriate OJP form. As stated above, OJP does not intend to impose any general requirement that all FY 2018 Title II recipients submit all such certifications to OJP for review.

- 4. What are DOJ’s expectations of state recipients of FY 2018 Title II, Part B Formula Grant funding for subrecipient monitoring with respect to award condition 36?**

These FAQs are for reference only and to assist States and units of local government. These FAQs do not supersede any conflicting guidance provided in the relevant solicitations or grant award documents.

FY 2018 Title II, Part B Formula Grant awards include an award condition entitled “Noninterference (within the funded "program or activity") with federal law enforcement: 8 U.S.C. 1373; ongoing Compliance” (condition 36). This condition specifies that the recipient’s monitoring responsibilities include monitoring of subrecipient compliance with the requirements of this condition. In general, the purpose of all subrecipient monitoring is to ensure that the subaward is being used for the authorized purpose, in compliance with the federal program and grant requirements, laws, and regulations, and the subaward performance goals are achieved. DOJ expects that an award recipient would fold the subrecipient monitoring for these award conditions into its normal grant monitoring practices, and does not expect that more or different kinds of monitoring would be required for these award conditions than for other award conditions. Accordingly, DOJ would expect the award recipient to make an appropriate inquiry regarding compliance upon the recipient’s learning of credible allegations of noncompliance with these award conditions, just as DOJ would expect the award recipient to make an appropriate inquiry regarding compliance with any other award conditions upon the recipient’s learning of a credible allegation of noncompliance. But it is not expected that award recipients would *proactively* make determinations regarding whether a subrecipient or proposed subrecipient complies with the terms of the award condition; instead, for example, a recipient may wish to request certifications regarding compliance with these award conditions to accompany regular financial or programmatic reports from subrecipients.