



Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance Grant (JAG) Program

Prohibited and Controlled Equipment Guidance for Awards Made During or After (federal) Fiscal Year 2023

AWARD CONDITIONS: “EXPENDITURES PROHIBITED WITHOUT WAIVER” AND “COMPLIANCE WITH RESTRICTIONS ON THE USE OF FEDERAL FUNDS: PROHIBITED AND CONTROLLED EQUIPMENT UNDER OJP AWARDS”

Overview

Consistent with [Executive Order 14074](#) (*Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety*, May 25, 2022), award condition “Compliance with restrictions on the use of federal funds: Prohibited and Controlled Equipment under OJP awards” provides lists of items that are prohibited under all OJP awards, and items that are “controlled” under all OJP awards. Separately, the JAG statute, at [34 U.S.C. § 10152](#), prohibits the use of JAG funds for certain items, and prohibits the use of JAG funds for other items unless BJA grants a waiver. This document provides lists, details, definitions, and procedures for prohibited and controlled expenditures and equipment under the BJA JAG Program for awards made during or after FY 2023, consistent with both [Executive Order 14074](#) and [34 U.S.C. § 10152](#).

Guidance on prohibited and controlled expenditures under the JAG Program for awards made prior to FY 2023 can be found at <https://bja.ojp.gov/doc/jag-controlled-purchase-list-pre-2023.pdf>.

Categories

- [Category A – Strictly Prohibited](#): The use of JAG funds for the purchase or transfer of any item listed in Category A is strictly prohibited and no waiver may be granted to utilize JAG funds for items listed in Category A.
- [Category B – Statutorily Prohibited without Waiver](#): The use of JAG funds for the purchase or transfer of items listed in Category B is prohibited unless Department of Justice first certifies in writing that extraordinary and exigent circumstances exist that make the use of JAG award funds to provide such matters essential to the maintenance of public safety and good order. See [Requesting a Certification Regarding Items in Category B – Statutorily Prohibited without Waiver](#) for instructions.
- [Category C – Statutorily Prohibited without Waiver and Controlled Consistent with E.O. 14074](#): The use of JAG funds for the purchase or transfer of items listed in Category C is prohibited unless Department of Justice first certifies in writing that extraordinary and exigent circumstances exist that make the use of JAG award funds to provide such matters essential to the maintenance of public safety and good order. In addition, the use of OJP grant funds for the purchase or transfer of equipment listed in Category C is controlled by award condition, consistent with E.O. 14074. Recipients may not use JAG funds for items on the controlled equipment list without express prior written approval

post-award. See [Requesting a Certification Regarding Items in Category C – Statutorily Prohibited without Waiver and Controlled Consistent with E.O. 14074](#) for instructions.

- [Category D – Controlled Consistent with E.O. 14074](#): The use of OJP grant funds for the purchase or transfer of the equipment listed in Category D is controlled by award condition, consistent with E.O. 14074. Recipients may not use JAG funds for items on the controlled equipment list without express prior written approval post-award. See [Requesting a Certification Regarding Items in Category D – Controlled Consistent with E.O. 14074](#) for instructions.

Procedures

- [Requesting a Certification Regarding Items in Category B – Prohibited without Waiver](#)
- [Requesting a Certification Regarding Items in Category C - Statutorily Prohibited without Waiver and Controlled Consistent with E.O. 14074](#)
- [Requesting a Certification Regarding Items in Category D – Controlled Consistent with E.O. 14074](#)

JAG Exceptions Regarding Prohibited and Controlled Equipment under OJP Awards

Categories

Category A – Strictly Prohibited

The use of JAG funds for the purchase or transfer of any item listed in Category A is strictly prohibited. No waiver may be granted to utilize JAG funds for items listed in Category A.

- Any direct or indirect use of Byrne JAG award funds to provide any security enhancements or any equipment to any nongovernmental entity that is not engaged in criminal justice or public safety.
- Firearms of .50 or greater caliber.
- Ammunition of .50 or greater caliber.
- Firearm silencers, as defined in 18 U.S.C. 921(a)(24).
- Bayonets.
- Grenades (including stun and flash-bang).
- Grenade launchers (including launchers for stun and flash-bang).
- Explosives (except for explosives and percussion actuated non-electric disruptors used for accredited bomb squads and explosive detection canine training).
- Any vehicles that do not have a commercial application, including all tracked and armored vehicles, unless the LEA certifies that the vehicle will be used exclusively for disaster-related emergencies; active shooter scenarios; hostage or other search and rescue operations; or anti-terrorism preparedness, protection, prevention, response, recovery, or relief.
- Unmanned Aerial System (UAS), Unmanned Aircraft (UA) and/or Unmanned Aerial Vehicle (UAV)
- Weapons systems covered by DOD Directive 3000.09 of November 21, 2012, as amended (Autonomy in Weapon Systems).
- Weaponized aircraft, vessels, and vehicles of any kind.
- Aircraft that are combat-configured or combat-coded, have no established commercial flight application, or have no application for disaster-related emergencies; active shooter scenarios; hostage or other search and rescue operations; or anti-terrorism preparedness, protection, prevention, response, recovery, or relief.
- Long-range acoustic devices that do not have a commercial application.

- Camouflage Uniforms (digital pattern). Woodland and desert patterns are allowable based on operational needs. Camouflage may not be worn in urban or populous areas.

Category B – Statutorily Prohibited without Waiver

The use of JAG funds for the purchase or of items listed in Category B is prohibited unless the Department of Justice first certifies in writing that extraordinary and exigent circumstances exist that make the use of JAG award funds to provide such matters essential to the maintenance of public safety and good order. See [Requesting a Certification Regarding Items in Category B – Statutorily Prohibited without Waiver](#) for instructions.

- Vehicles (excluding police cruisers), vessels (excluding police boats), or aircraft (see (excluding police helicopters). (See Category C)
- Luxury items
- Real estate
- Construction projects (other than penal or correctional institutions)
- Any similar matter

“Vehicles” includes, without limitation:

- Buses / recreational vehicles.
- Trucks, including pickup trucks.
- Vans, including passenger vans.
- Motorcycles.
- Sport utility vehicles (SUVs).
- Segways, golf carts, all-terrain vehicles (ATVs), utility task vehicles (UTVs) and similar items — when and if applicable state or local law requires licensing or registration of such items.

For purposes of Category B, a **vehicle is considered a “police cruiser” only if it is used in the ordinary course for routine police patrol within the United States. Vehicles (including motorcycles, SUVs, pickup trucks, ATVs, and UTVs) used as “police cruisers” are not prohibited under JAG, and therefore may be acquired with JAG funds in the ordinary course, to the extent otherwise allowable under the award.**

“Vessels” includes, without limitation:

- Any form of boat or watercraft capable of holding or transporting instruments, other cargo and/or at least one person.

For purposes of Category B, a “vessel” is considered a **“police boat”** only if it is used by the recipient jurisdiction (or subrecipient jurisdiction, as applicable) in the ordinary course to conduct law enforcement operations within the United States.

Vessels used as “police boats” are not included on the Prohibited List, and therefore may be acquired with Byrne JAG funds in the ordinary course, to the extent otherwise allowable under the award.

“Aircraft*” includes, without limitation:

- Any craft designed to move instruments, other cargo, and/or at least one person through the air, such as helicopters or airplanes (rotary-wing or fixed-wing aircraft).

For purposes of Category B, a helicopter is considered a “**police helicopter**” only if it is used by the recipient jurisdiction (or subrecipient jurisdiction, as applicable) in the ordinary course to conduct law enforcement operations within the United States.

**Aircraft used as “police helicopters” are not included on the Prohibited List; however, police helicopters are included in Category D and require certification.*

Category C – Statutorily Prohibited without Waiver and Controlled consistent with E.O. 14074

The use of OJP grant funds for the purchase or transfer of the following equipment is controlled, and recipients may not obligate, expend, or draw down funds for items on the controlled equipment list without express prior written approval post-award, via Grant Award Modification in OJP’s JustGrants system.

- Command and/or Control Vehicles (Any wheeled vehicle either purpose-built or modified to facilitate the operational control and direction of public safety units responding to an incident). Command and Control Vehicles are similar to a recreational vehicle and can accommodate multiple people at multiple workstations in the command center. This category is not intended for other types of vehicles that could serve as a command and control center, including sport utility vehicles (SUVs).
- Tactical Vehicles, wheeled (A vehicle purpose-built to operate on- and off-road in support of military operations, such as a HMMWV (“Humvee”), 2.5 ton truck, 5-ton truck, or a vehicle with a breaching or entry apparatus attached). This excludes commercially available vehicles not tactical in nature, such as pick-up trucks or SUVs being used in the ordinary course by police forces in the United States for patrol activities.
- Wheeled armored vehicles.
- Manned aircraft, fixed and/or rotary wing. This excludes police helicopters, however, police helicopters are subject to the requirements of Category D.

Category D – Controlled consistent with E.O. 14074

The use of OJP grant funds for the purchase or transfer the following equipment is controlled, and recipients may not obligate, expend, or draw down funds for items on the controlled equipment list without express prior written approval post-award, via Grant Award Modification in OJP’s JustGrants system.

- Police helicopters
- Specialized firearms and ammunition under .50 caliber. This excludes service-issued handguns, rifles, or shotguns that are issued or approved by the agency to be used during the course of regularly assigned duties.
- Explosives and pyrotechnics

Procedures

Requesting a Certification Regarding Items in Category B – Statutorily Prohibited without Waiver

The recipient may **not** obligate (or “use”) any JAG award funds for the item until and unless the Department of Justice makes the required certification.

To request a Department of Justice certification the recipient must:

1. Using the JustGrants system (JustGrants) submit a “Programmatic Costs” Grant Award Modification (GAM), marked “Other” and with “JAG - Category B – Statutorily Prohibited without Waiver” typed in the available text box.
2. Attach to the GAM a letter, on the letterhead of the recipient jurisdiction and signed by the recipient’s “authorized representative” for the particular JAG award in question, that addresses the following elements:
 - a. The use of JAG award funds as to which the recipient requests the required certification and the award number of the JAG award from which funds would be obligated and used.
 - b. A general description of the recipient (or subrecipient, if applicable) that will use award funds for the requested purpose.
 - c. The amount of award funds that would be used for the requested purpose if the Department of Justice makes the required certification.
 - d. A detailed justification that provides sufficient information to support a Department of Justice finding and certification that “extraordinary and exigent circumstances” exist that make use of the JAG award funds for the requested purpose “essential to the maintenance of public safety and good order.”

If the Department of Justice makes the required certification, the recipient will be notified and will receive a copy of the Department certification.

Requesting a Certification Regarding Items in Category C - Statutorily Prohibited without Waiver and Controlled consistent with E.O. 14074

The recipient may **not** obligate (or “use”) any JAG award funds for the item until and unless the Department of Justice makes the required certification.

To request a Department of Justice certification the recipient must:

1. Using the JustGrants system (JustGrants) submit a “Programmatic Costs” Grant Award Modification (GAM), marked “Other” and with “Category C - Statutorily Prohibited without Waiver and Controlled consistent with E.O. 14074” typed in the available text box.
2. Attach to the GAM a letter, on the letterhead of the recipient jurisdiction and signed by the recipient’s “authorized representative” for the particular JAG award in question, that addresses the following elements:
 - a. The use of JAG award funds as to which the recipient requests the required certification and the award number of the JAG award from which funds would be obligated and used.
 - b. A general description of the recipient (or subrecipient, if applicable) that will use award funds for the requested purpose.
 - c. The amount of award funds that would be used for the requested purpose if the Department of Justice makes the required certification.
 - d. A detailed justification that provides sufficient information to support a Department of Justice finding and certification that “extraordinary and exigent circumstances” exist that make use of the JAG award funds for the requested purpose “essential to the maintenance of public safety and good order.”
 - e. A detailed justification for acquiring the controlled items, including a clear and persuasive explanation of the need for and appropriate criminal justice purpose that it will serve. (If applicable, please describe any previous instance in which the

- controlled item was used in a manner that deviated from the detailed justification supporting the application for that equipment.).
- f. The number of units of the requested controlled item(s) that are currently in your agency's inventory.
 - g. Categories of other controlled equipment acquired through federal programs during the past three (3) years that the requesting agency currently has in its inventory.
 - h. Whether the requested controlled equipment currently could reasonably be accessed through loans or mutual assistance or mutual aid agreements.
 - i. Certification (written assurance) that the requesting agency has adopted required protocols or will adopt those protocols before physical acquisition or purchase of controlled equipment or transfer of funds (see [Policies and Protocols](#)).
 - j. Certification (written assurance) that the requesting agency has provided required training or will provide that training before physical acquisition or purchase of controlled equipment or transfer of funds (see [Training](#));
 - k. Evidence of civilian governing body's review and approval or concurrence of the requesting agency's acquisition of the requested controlled equipment; Or, if the requesting agency's chief executive is popularly elected (e.g., a Sheriff), evidence of official written notice to the civilian governing body at least 30 days in advance of the application to acquire controlled equipment.
 - l. Whether the requesting agency has applied, or has a pending application(s), for this type of controlled equipment from another federal agency during the current fiscal year.
 - m. Whether any prior application for controlled equipment has been denied by a federal agency during the past three (3) years, and, if so, the reason for the denial; and
 - n. Whether the requesting agency has been found to be in violation of a federal civil rights statute or programmatic term during the past three (3) years and, if so, whether any disposition was reached or corrective actions were taken. LEAs must disclose any finding by a federal court or a federal government agency, including an agency's Office of Civil Rights or the Civil Rights Division of the U.S. Department of Justice, that the LEA has violated a federal civil rights law with respect to their policing functions. LEAs must also disclose any admissions of liability they have made regarding violations of federal civil rights law in their policing functions.

If the Department of Justice makes the required certification, the recipient will be notified and will receive a copy of the Department certification.

Requesting a Certification Regarding Items in Category D – Controlled consistent with E.O. 14074

The recipient may not obligate (or "use") any Byrne JAG award funds for the item until and unless the Department of Justice makes the required certification.

To request a Department of Justice certification the recipient must:

1. Using the JustGrants system (JustGrants) submit a "Programmatic Costs" Grant Award Modification (GAM), marked "Other" and with "Controlled Equipment Request" typed in the available text box.
2. Attach to the GAM a letter, on the letterhead of the recipient entity and signed by the recipient's "authorized representative" for the OJP award that includes each of the following elements:

- a. A general description of the requesting agency;
- b. A detailed justification for acquiring the controlled items, including a clear and persuasive explanation of the need for and appropriate criminal justice purpose that it will serve. (If applicable, please describe any previous instance in which the controlled item was used in a manner that deviated from the detailed justification supporting the application for that equipment.);
- c. The number of units of the requested controlled item(s) that are currently in your agency's inventory;
- d. Categories of other controlled equipment acquired through Federal programs during the past three (3) years that the requesting agency currently has in its inventory;
- e. Whether the requested controlled equipment currently could reasonably be accessed through loans or mutual assistance or mutual aid agreements;
- f. Certification (written assurance) that the requesting agency has adopted required protocols or will adopt those protocols before physical acquisition or purchase of controlled equipment or transfer of funds (see [Policies and Protocols](#)).
- g. Certification (written assurance) that the requesting agency has provided required training or will provide that training before physical acquisition or purchase of controlled equipment or transfer of funds (see [Training](#));
- h. Evidence of civilian governing body's review and approval or concurrence of the requesting agency's acquisition of the requested controlled equipment; Or, if the requesting agency's chief executive is popularly elected (e.g., a Sheriff), evidence of official written notice to the civilian governing body at least 30 days in advance of the application to acquire controlled equipment.
- i. Whether the requesting agency has applied, or has a pending application(s), for this type of controlled equipment from another federal agency during the current fiscal year;
- j. Whether any prior application for controlled equipment has been denied by a federal agency during the past three (3) years, and, if so, the reason for the denial; and
- k. Whether the requesting agency has been found to be in violation of a federal civil rights statute or programmatic term during the past three (3) years and, if so, whether any disposition was reached or corrective actions were taken. LEAs must disclose any finding by a federal court or a federal government agency, including an agency's Office of Civil Rights or the Civil Rights Division of the U.S. Department of Justice, that the LEA has violated a federal civil rights law with respect to their policing functions. LEAs must also disclose any admissions of liability they have made regarding violations of federal civil rights law in their policing functions.

If the Department of Justice makes the required certification, the recipient will be notified and will receive a copy of the Department certification.

JAG Exceptions Regarding Prohibited and Controlled Equipment Under OJP awards

Notwithstanding any provision to the contrary in the other terms and conditions of this award, including in the condition regarding "Compliance with restrictions on the use of federal funds: Prohibited and Controlled Equipment under OJP awards," the requirements for the "Transfer/Sale of Award-Funded Controlled Equipment to Other LEAs" and the requirements for the "Transfer/Sale of Award-Funded Controlled Equipment to NON-LEAs" do not apply to JAG awards.