

Questions & Answers related to 8 U.S.C. § 1373 and new express conditions on Department of Homeland Security Access and Notice Requirements

1. What are the requirements under 8 U.S.C. § 1373?

As currently in effect, 8 U.S.C. § 1373 provides the following:

Communication between government agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

2. 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.

3. 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.

4. What if an applicant does 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?

Where the applicant State or unit of local government (not an Indian tribe) does 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, the applicant will not be able to make a valid award acceptance, **unless and until** a properly-executed certification by its 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.

5. 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?

An award condition will require 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 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).

6. Must the fiscal agent applying for an FY 2017 JAG award on behalf of 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?

An award condition will require 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 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).

7. 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.

8. 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.

9. 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.

10. Who may sign the “Certification of Compliance with 8 U.S.C. § 1373” as the Chief Legal Officer for Unit of 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 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.

11. Has the text of the FY 2017 JAG Local conditions been made available?

The Office of Justice Programs (OJP) has begun to transmit "award packages" to prospective recipients of awards under the FY 2017 Edward Byrne Justice Assistance Grant ("JAG") Program - Local Solicitation.

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.)