

**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.