

## Archive materials: “Prohibited Expenditure List” and “Controlled Expenditure List”

**Effective as of August 29, 2017, the information set out below has been superseded.**

This archive material is provided for reference, and must be read in light of the specific award conditions included in a particular award made under the FY 2015, FY 2016, or FY 2017 Byrne JAG program.

The information set out below reflects the content posted by BJA on mid-June, 2017.

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### Overview

This document contains a list of all expenditures that are controlled under the [JAG program statute](#) (42 U.S.C. § 3751(a)) or under [Executive Order \(EO\) 13688](#). There are different approval processes for statutory and EO controlled expenditures under JAG; however both categories of controlled expenditures require prior written approval from BJA. This document is broken into the following six sections and should be reviewed in its entirety:

1. Table of all expenditures **controlled** under the [JAG statute](#) which are **applicable to all active JAG awards** along with guidance as to how JAG Statutory controlled expenditures requests should be submitted;
2. Table of all expenditures **strictly prohibited** under [Executive Order 13688](#);
3. Table of all expenditures **controlled** under [Executive Order 13688](#);
4. Controlled Expenditures Justification Template which **must** be completed and submitted for any [Executive Order 13688](#) controlled expenditures request to be considered for approval by BJA;
5. Overall [Executive Order 13688](#) Controlled Expenditure/Equipment Guidance which should be reviewed in conjunction with the template prior to controlled expenditures request(s) being submitted to BJA); and
6. [Executive Order 13688](#) Standards for State, Local and Tribal Law Enforcement Agencies for the Acquisition of Controlled Equipment with Federal Resources.

**\*All changes to the EO Prohibited and Controlled Expenditures tables below have been highlighted.** [Editorial note as of September 2017: the changes highlighted in yellow were posted in mid-June 2017.]

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# 1. Statutorily Controlled Expenditures

Applicable to all active JAG awards and controlled by the JAG statute

Any projects and/or items listed below are unallowable under JAG unless a controlled expenditure request is first submitted and approved by BJA. **All requests for projects/items controlled under the JAG statute must be submitted post-award via a “Program Office Approval” Grant Adjustment Notice (GAN) marked “Other” and must be submitted with “JAG Controlled Expenditure Request” typed in the available text box.** The GAN must include an attached letter, on agency letterhead and signed by an agency’s authorized representative (highest ranking official), with justification language that describes: 1. A general description of the requesting agency; and 2. A detailed justification for supporting the controlled project and/or 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.)

Luxury items and Real estate
Construction projects (other than penal or correctional institutions)
*Unmanned Aerial System (UAS), Unmanned Aircraft (UA) and/or Unmanned Aerial Vehicle (UAV). All UAS, UA and/or UAV purchases must strictly follow the <a href="#">Executive Order 13688 controlled expenditures guidance</a> and supplemental guidance for UA/UAS/UAV purchases provided by BJA.
Wheeled Armored Vehicles
Bus / RV (Recreational Vehicle) / Command Vehicle
Truck
Van
*Helicopter (Non-Police Patrol)
*SUV (Non-Police Patrol)
*Boat (Non-Police Patrol)
*Segway, Golf Cart, ATV or similar (Non-Police Patrol)
*Waiver request is only required if the vehicle is NOT being used in the ordinary course by police forces in the United States for patrol activities. Additionally, Segways, ATVs and golf carts never require a waiver request in states which do not require licensing and registration for those vehicle types.

## 2. Prohibited Expenditures under Executive Order 13688

Any items listed below or projects related to these items are **strictly prohibited** under JAG per the [Executive Order 13688 on Federal Support for Local Law Enforcement Equipment Acquisition](#). These projects and/or items cannot be approved under any circumstances.

<b><u>Prohibited Expenditures for FY 2015 and 2016</u></b>	<b><u>Prohibited Expenditures for FY 2017 (through August 28, 2017)</u></b> [Editorial note: column title revised for clarity as of August 29, 2017]
Tracked armored vehicles	Tracked armored vehicles
Weaponized aircraft, vessels and vehicles of any kind	Weaponized aircraft, vessels and vehicles of any kind
Firearms and/or ammunition with a caliber of .50 or higher	Firearms and/or ammunition with a caliber of .50 or higher
Grenade Launchers	Grenade Launchers <b>*Excluding launchers specifically designed and built to launch less than lethal projectiles.</b>
Bayonets	Bayonets
Camouflage Uniforms (digital pattern) *Woodland and desert patterns are allowable based on operational needs. Camouflage may not be worn in urban or populous areas.	Camouflage Uniforms (digital pattern) *Woodland and desert patterns are allowable based on operational needs. Camouflage may not be worn in urban or populous areas.

### 3. Controlled Expenditures under Executive Order 13688

Any projects and/or items listed within the “**Controlled Expenditures**” table below are only allowable under JAG with prior written approval from BJA. This list contains items controlled under [Executive Order 13688 on Federal Support for Local Law Enforcement Equipment Acquisition](#). **To submit a request for approval, please follow the instructions on page six of this document.**

<p><b><u>Controlled Expenditures for FY 2015 and 2016</u></b></p>	<p><b><u>Controlled Expenditures for FY 2017, through August 28, 2017</u></b>                      [Editorial note: column title revised for clarity as of August 29, 2017]</p>
<p>Unmanned Aerial System (UAS), Unmanned Aircraft (UA) and/or Unmanned Aerial Vehicle (UAV).</p> <p>*To utilize JAG funds for UAS, UA and/or UAV purchases, award recipients must follow controlled expenditures request instructions as well as adhere to the UAS Guidance found here: <a href="https://www.bja.gov/Publications/BJA-UAS-Guidance.pdf">https://www.bja.gov/Publications/BJA-UAS-Guidance.pdf</a>.</p>	<p>Unmanned Aerial System (UAS), Unmanned Aircraft (UA) and/or Unmanned Aerial Vehicle (UAV).</p> <p>*To utilize JAG funds for UAS, UA and/or UAV purchases, award recipients must follow controlled expenditures request instructions as well as adhere to the UAS Guidance found here: <a href="https://www.bja.gov/Publications/BJA-UAS-Guidance.pdf">https://www.bja.gov/Publications/BJA-UAS-Guidance.pdf</a>.</p>
<p>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 SUVs.</p>	<p>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 SUVs.</p>
<p>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).</p> <p>*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.</p>	<p>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).</p> <p>*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.</p>

Manned aircraft, fixed and/or rotary wing	Manned aircraft, fixed and/or rotary wing
Specialized firearms and ammunition under .50 caliber (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).	Specialized firearms and ammunition under .50 caliber  *This includes launchers specifically designed and built to launch less lethal projectiles but 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	Explosives and pyrotechnics

#### 4. Executive Order 13688 on Federal Support for Local Law Enforcement Equipment Acquisition Controlled Expenditures Justification Template

This template is based on recommendations pursuant to Executive Order 13688 on Federal Support for Local Law Enforcement Equipment Acquisition. To utilize JAG funds to support a project and/or purchase an item listed within the “**Controlled Expenditures**” table above, grantees must **submit a “Program Office Approval” Grant Adjustment Notice (GAN) marked “Other” with “JAG EO Controlled Expenditure Request” typed in the available text box**. The GAN must include an attached letter, on agency letterhead, signed by an agency’s authorized representative (highest ranking official), that addresses **all 11 elements listed below**.

Grantees may only submit this request after accepting their award (cannot be submitted at the time of application) and may not expend any JAG funds for controlled items until prior written approval has been granted by BJA to do so. Grantees wishing to purchase Unmanned Aerial Vehicles/Systems must adhere to the additional guidance found here:

<https://www.bja.gov/Publications/BJA-UAS-Guidance.pdf>.

1. A general description of the requesting agency;
2. A detailed justification for supporting the controlled project and/or 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.);
3. The number of units of the requested controlled item(s) that are currently in your agency’s inventory;
4. Categories of other controlled equipment acquired through Federal programs during the past three (3) years that the requesting agency currently has in its inventory;

5. Whether the requested controlled equipment currently could reasonably be accessed through loans or mutual assistance or mutual aid agreements;
6. Certification (written assurance) that the requesting agency has adopted required protocols ([see Recommendation 2.1](#): Agencies that acquire controlled equipment through Federal programs must adopt robust and specific written policies and protocols governing General Policing Standards and Specific Controlled Equipment Standards.) or will adopt those protocols before physical acquisition or purchase of controlled equipment or transfer of funds;
7. Certification (written assurance) that the requesting agency has provided required training ([see Recommendation 2.2](#): Agencies that acquire controlled equipment through Federal programs must ensure that its personnel are appropriately trained and that training meets the specified requirements.) or will provide that training before physical acquisition or purchase of controlled equipment or transfer of funds;
8. Evidence of civilian governing body's review and approval (unless the chief executive is popularly elected such as Sheriff's) or concurrence of the requesting agency's acquisition of the requested controlled equipment.
9. 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;
10. 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
11. 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.

## **5. Controlled Equipment Implementation Guidance**

The following issues have been identified for your review as the Department of Justice continues to implement the recommendations from the "Federal Support for Local Law Enforcement Equipment Acquisition". Any additional updates will be provided via email to all grantees, and will be made available at BJA's website.

### **Equipment issues:**

**MODIFICATIONS.** LEAs may not modify equipment acquired using Federal resources that would cause it to be considered prohibited equipment, or, absent specific approval from the Federal agency and adherence to all relevant requirements, controlled equipment.

**CAMOUFLAGE UNIFORMS.**<sup>1</sup> Federally-acquired camouflage-patterned uniforms are not authorized to be worn in environments where they do not actually camouflage the wearer, including cities, towns, and other urban or populous areas.

**TRANSFER / SALE OF CONTROLLED EQUIPMENT TO NON-LEAs.** Recommendation 4.2 limits the type of equipment that LEAs can transfer or sell to non-LEAs to fixed-wing aircrafts, rotary-wing aircrafts, and command and control vehicles.<sup>2</sup> The Working Group has added a fourth category of vehicles to this list – Tactical Vehicles, such as HMMWVs, which are not armored vehicles. Consistent with the Report, any equipment in these four categories must be stripped of law enforcement insignias and markings prior to transferring or selling the equipment; sensitive or potentially dangerous components must also be removed. The LEA also must notify and receive written approval from the Federal agency through which it acquired the controlled equipment. The receiving LEA must follow the same pre or post-award procedures for acquiring the controlled equipment as noted on Page 3 of this document.

### **Compliance and Oversight:**

**CIVILIAN GOVERNING BODY REVIEW.**<sup>3</sup> The Working Group has amended this requirement for LEAs where the chief executive is popularly elected (e.g. Sheriffs). Such LEAs must provide official written notice to – but is not required to obtain approval from – its civilian governing body at least 30 days in advance of any application to acquire controlled equipment from the Federal Government. This change takes into account the fact that popularly elected heads of LEAs are directly accountable to their community-constituency.

### **Policies and Protocols:**

**MODEL POLICIES AND DEFINITION OF POLICY GUIDELINES.**<sup>4</sup> DOJ provided funding to a group led by the International Association of Chiefs of Police (IACP), in partnership with the National Tactical Officers Association and the Commission on Accreditation for Law Enforcement Agencies, to provide more detailed definitions for the General Policing and Specific Controlled Equipment Standards and to develop model policies. The IACP-led group has consulted a number of subject matter experts during this process and has produced the detailed definitions, which the Working Group has accepted. These definitions apply to both the General Policing Standards and the Specific Controlled Equipment Standards, and are to this document for your use.

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<sup>1</sup> EO 13688, p. 13.

<sup>2</sup> EO 13688, p. 31.

<sup>3</sup> EO 13688, p. 28, Recommendation 3.1.

<sup>4</sup> EO 13688, p. 20.

## **6. Standards for State, Local and Tribal Law Enforcement Agencies for the Acquisition of Controlled Equipment with Federal Resources**

The IACP-led group has produced a document entitled “Standards for State, Local, and Tribal Law Enforcement Agencies for the Acquisition of Controlled Equipment with Federal Resources”. This document is designed to assist jurisdictions with meeting the requirements for acquiring controlled equipment and outlines specific considerations under the General Policing Standards and the Specific Controlled Equipment Standards. Recipients of federal equipment programs are encouraged to review these principles to ensure that they are present their individual agency policies and training programs.

Additional information related to BJA’s implementation of EO 13688 can also be found on the BJA’s webpage at: <https://www.bja.gov/publications/FederallyControlledEquipmentPolicy.pdf>.