

Award conditions for Edward Byrne Memorial Justice Assistance Grants (JAG) awards made during or after (federal) Fiscal Year 2015:

AWARD CONDITIONS: “PROHIBITED EXPENDITURE LIST” AND “CONTROLLED EXPENDITURE LIST”

Updated as of August 29, 2017

Starting with the FY 2015 program, each Office of Justice Programs (“OJP”) award made under the Byrne JAG State and Local solicitations includes a series of conditions that deal with the “Prohibited Expenditure List” and the “Controlled Expenditure List.” The information on this webpage— (1) describes the items currently included on the “**Prohibited Expenditure List**” and on the “**Controlled Expenditure List**,” and (2) provides important explanatory notes regarding conditions in awards under the FY 2015, FY 2016, and/or FY 2017 Byrne JAG programs. IMPORTANT NOTE: The explanatory notes, which follow the lists, are crucial to understanding existing award conditions.

PROHIBITED EXPENDITURE LIST

Effective starting as of August 29, 2017:

For purposes of conditions on OJP Byrne JAG awards that relate to the “Prohibited Expenditure List,” the following items are on the “Prohibited Expenditure List.” See 34 U.S.C. § 10152, previously codified at 42 U.S.C. § 3751.

IMPORTANT NOTE: *As indicated below, Byrne JAG award funds **may** be used for items otherwise listed in Prohibited Expenditure Category B **if** the Department of Justice **first** certifies in writing that extraordinary and exigent circumstances exist that make the use of Byrne JAG award funds to provide such matters essential to the maintenance of public safety and good order.*

Prohibited Expenditure 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.

Prohibited Expenditure Category B:

- **Unless the Department of Justice first certifies in writing that extraordinary and exigent circumstances exist that make the use of Byrne JAG award funds to provide such matters essential to the maintenance of public safety and good order,** the following items or matters are prohibited expenditures—

(1) vehicles (excluding police cruisers), vessels (excluding police boats), or aircraft (excluding police helicopters);

(2) luxury items;

(3) real estate;

(4) construction projects (other than penal or correctional institutions); and

(5) any similar matters or items as identified by the Department of Justice.

For purposes of item (1) above (related to vehicles, vessels, and aircraft), the following clarifications may be helpful.

“Vehicles” includes, without limitation—

- Wheeled armored vehicles / Tactical vehicles
- Buses / Recreational vehicles
- Command vehicles / Mobile Command and Control Centers
- Trucks, including pick-up trucks
- Vans, including passenger vans
- Motorcycles
- Sport/Utility Vehicles (“SUVs”)
- Segways, golf carts, all-terrain vehicles (“ATVs”), and similar items – when and if applicable State or local law requires licensing or registration of such items.

For purposes of the “Prohibited Expenditure List,” a vehicle is considered a **“police cruiser”** only if it is used by the recipient jurisdiction (or subrecipient jurisdiction, as applicable) in the ordinary course for routine police patrol within the United States. *Vehicles (including motorcycles and SUVs) used as “police cruisers” 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.*

“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 the “Prohibited Expenditure List,” 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 persons through the air, such as helicopters or airplanes (rotary-wing or fixed-wing aircraft).
- Unmanned Aerial Systems (UAS), Unmanned Aircraft (UA) and/or Unmanned Aerial Vehicles (UAV).

For purposes of the “Prohibited Expenditure List,” a helicopter is considered a “**police helicopter**” only 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, and therefore may be acquired with Byrne JAG funds in the ordinary course, to the extent otherwise allowable under the award.

Requesting a Certification regarding items in Prohibited Expenditure Category B

With respect to items in Prohibited Expenditure Category B – that is, items and matters that appear on the “Prohibited Expenditure List” *only if* the Department of Justice has **not** made the required certification of “extraordinary and exigent circumstances ... that make use of [award funds] ... essential to the maintenance of public safety and good order” – a recipient may request that the Department of Justice make the required certification by making a submission to OJP as described below.

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 of “extraordinary and exigent circumstances ... that make use of [award funds for the requested item or matter] ... essential to the maintenance of public safety and good order,” the recipient must—

1. Using OJP’s Grants Management System (“GMS”), submit a “Program Office Approval” Grant Adjustment Notice (GAN), marked “Other” and with “JAG - DOJ

certification request - extraordinary and exigent; essential” typed in the available text box.

2. Attach to the GAN—

A letter, on the letterhead of the recipient jurisdiction and signed by the recipient’s “authorized representative” for the particular Byrne JAG award in question, that—

- (a) indicates the use of Byrne JAG award funds as to which the recipient requests the required certification and the award number of the Byrne JAG award from which funds would be obligated and used;
- (b) provides a general description of the recipient (or subrecipient, if applicable) that will use award funds for the requested purpose;
- (c) indicates the amount of award funds that would be used for the requested purpose, if the Department of Justice makes the required certification;
- (d) sets out 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 Byrne JAG award funds for the requested purpose “essential to the maintenance of public safety and good order;” and
- (e) if the recipient requests a certification with respect to Unmanned Aerial Systems (UAS), Unmanned Aircraft (UA) and/or Unmanned Aerial Vehicles (UAV), includes, in addition to the above, documentation of FAA approval, obtained as outlined here: https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=22615

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

Prohibited Expenditure List, as in effect before August 29, 2017:

- see Important Explanatory Notes, below.

CONTROLLED EXPENDITURE LIST

Effective starting as of August 29, 2017:

- For purposes of conditions on OJP Byrne JAG awards that relate to the “Controlled Expenditure List,” no items appear on the “Controlled Expenditure List.”

Controlled Expenditure List, as in effect before August 29, 2017:

- see Important Explanatory Notes, below

IMPORTANT EXPLANATORY NOTES ON BYRNE JAG AWARD CONDITIONS

- **The precise conditions that apply** to a Byrne JAG award with respect to the “prohibited expenditure list” and the “controlled expenditure list” **vary** depending on whether the award was made under the FY 2015, FY 2016, or FY 2017 Byrne JAG program. To determine which conditions apply to a particular OJP award, refer to the award conditions that accompany the particular **award document**.
- **The contents of both lists have changed over time.** As discussed in more detail below, recipients and others are to refer to *the version of each list that applied at the time* of an actual or proposed obligation (“use”) of (federal) Byrne JAG award funds, as well as the conditions in the particular Byrne JAG award. Archival information that includes prior versions of both lists (which are incorporated by reference herein) may be accessed at <https://www.bja.gov/Jag/pdfs/JAGControlledExpendituresArchive.pdf>.
- **Pertinent dates – “use” of federal funds,” “purchase under the award,” and related matters.** For purposes of conditions on Byrne JAG awards that relate to the “Prohibited Expenditure List” or the “Controlled Expenditure List” —
 - Award funds are not considered “used for items that are listed” on the Prohibited Expenditure List or Controlled Expenditure List “at the time of purchase or acquisition” until such time as (federal) Byrne JAG award funds are either— (1) obligated for the purchase or acquisition of the item, or (2) obligated to reimburse a recipient for the costs of a purchase or acquisition initially made with the funds other than federal funds awarded by OJP (*e.g.*, the costs of a purchase or acquisition initially made with the recipient’s own non-federal funds).
 - Similarly, an item on either the “Prohibited Expenditure List” or the “Controlled Expenditure List” is not considered “purchased under the award” or “acquired through a federal program” until such time as (federal) Byrne JAG award funds are either— (1) obligated for the purchase or acquisition of the item, or (2) obligated to reimburse a recipient for the costs of a purchase or acquisition initially made with the funds other than federal funds awarded by OJP (*e.g.*, the costs of a purchase or acquisition initially made with the recipient’s own non-federal funds).
 - The “allowability” of a cost for purchase or acquisition of an item on the “Prohibited Expenditure List” or the “Controlled Expenditure List” is determined

as of the date of the pertinent obligation of (federal) award funds either— (1) for the purchase or acquisition of the item, or (2) to reimburse the award recipient for the costs of a purchase or acquisition initially made with the funds other than federal funds awarded by OJP.

- The applicability of a requirement with respect to transfer or sale of an item “on the Controlled Expenditure List” – or a requirement with respect to notice to OJP prior to disposal of such an item – is determined at the time of the transfer, sale, or disposal. That is, the requirement applies if the item is “on the Controlled Expenditure list” *at the time of the transfer, sale, or disposal*.
 - In the event that an item is removed from the “Controlled Expenditure List,” any requirements (related to that item) for “incident reporting” and for adoption of standards shall cease as of the date it is removed from the “Controlled Expenditure List.”
 - Should a recipient have a question regarding whether an item appears (or appeared) on the “Prohibited Expenditure List” or the “Controlled Expenditure List” as of a particular date, the recipient is to contact OJP for clarification.
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“PROHIBITED EXPENDITURE LIST” AND “CONTROLLED EXPENDITURE LIST” -
Versions in effect *prior to* August 29, 2017

As in effect from mid-June 2017 through August 28, 2017

- The archive materials set out in the following pages (<https://www.bja.gov/Jag/pdfs/JAGControlledExpendituresArchive.pdf>), identify the items and matters that were on the “Prohibited Expenditure List” or the “Controlled Expenditure List” from mid-June 2017 through August 28, 2017. Text and related material highlighted in yellow **WAS** encompassed by the lists for this time period.

As in effect starting at the time of awards made under the FY 2015 Byrne JAG program and continuing until mid-June 2017

- The archive materials set out in the following pages (<https://www.bja.gov/Jag/pdfs/JAGControlledExpendituresArchive.pdf>), identifies the items and matters that were on the “Prohibited Expenditure List” or the “Controlled Expenditure List” starting at the time awards were made under the FY 2015 Byrne JAG program and continuing until mid-June 2017. Text and related matter highlighted in yellow **WAS NOT** encompassed by the lists for this time period.