§ 65.84 Procedures for the Attorney General when seeking State or local assistance.

(a)(1) When the Attorney General determines to seek assistance from a State or local government under §65.83 of this subpart, or when the President has determined that an immigration emergency exists, the Attorney General shall negotiate the terms and conditions of that assistance with the State or local government. The Attorney General shall then execute a written agreement with appropriate State or local officials, which sets forth the terms and conditions of the assistance, including funding. Such written agreements can be reimbursement agreements, grants, or cooperative agreements.

(2) The Commissioner may execute written contingency agreements regarding assistance under §65.83(d) of this subpart in advance of the Attorney General’s determination pursuant to that section. However, such advance agreements shall not authorize State or local law enforcement officers to
perform any functions of Service officers or employees under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), until the Attorney General has made the necessary determinations and authorizes such performance. Any such advance agreements shall contain precise activation procedures.

(3) Written agreements regarding assistance under §65.83(d) of this subpart, including contingency agreements, shall include the following minimum requirements:

(i) A statement of the powers, privileges, or duties that State or local law enforcement officers will be authorized to exercise and the conditions under which they may be exercised;

(ii) A statement of the types of assistance by State or local law enforcement officers for which the Attorney General shall be responsible for reimbursing the relevant parties in accordance with the procedures set forth in paragraph (b) of this section;

(iii) A statement that the relevant State or local law enforcement officers are not authorized to exercise any functions of Service officers or employees under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), until the Attorney General has made a determination pursuant to that section and authorizes such performance;

(iv) A requirement that State or local law enforcement officers cannot exercise any authorized functions of Service officers or employees under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), until they have successfully completed and been certified in a Service-prescribed course of instruction in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues;

(v) A description of the duration of the written agreement, and of the authority the Attorney General will confer upon State or local law enforcement officers pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), along with a provision for amending, terminating, or extending the duration of the written agreement, or for terminating or amending the authority to be conferred pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8);

(vi) A requirement that the exercise of any Service officer functions by State or local law enforcement officers pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), be at the direction of the Service;

(vii) A requirement that any State or local law enforcement officer performing Service officer or employee functions pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), must adhere to the policies and standards set forth during the training, including applicable immigration law enforcement standards and procedures, civil rights law, and sensitivity and cultural awareness issues;

(viii) A statement that the authority to perform Service officer or employee functions pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), does not abrogate or abridge constitutional or civil rights protections;

(ix) A requirement that a complaint reporting and resolution procedure for allegations of misconduct or wrongdoing by State or local officers designated, or activities undertaken, pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), be in place;

(x) A requirement that a mechanism to record and monitor complaints regarding the immigration enforcement activities of State or local law enforcement officers authorized to enforce immigration laws be in place;

(xi) A listing by position (title and name when available) of the Service officers authorized to provide operational direction to State or local law enforcement officers assisting in a Federal response pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8);

(xii) A requirement that a State or local law enforcement agency maintain records of operational expenditures incurred as a result of supporting the Federal response to a mass influx of aliens;

(xiii) Provisions concerning State or local law enforcement officer use of Federal property or facilities, if any;

(xiv) A requirement that any department, agency, or establishment whose State or local law enforcement officer is performing Service officer or employee functions shall cooperate fully in any Federal investigation related to
allegations of misconduct or wrongdoing in conjunction with such functions, or to the written agreement; and

(xv) A procedure by which the appropriate law enforcement agency, department, or establishment will be notified that the Attorney General has made a determination under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), to authorize State or local law enforcement officers to exercise Federal immigration enforcement authority under the provisions of the respective agreements.

§ 65.85 Procedures for State or local governments applying for funding.

(a) In the event that the chief executive of a State or local government determines that any of the circumstances set forth in §65.83 of this subpart exists, he or she may pursue the procedures in this section to submit to the Attorney General an application for a reimbursement agreement, grant, or cooperative agreement as described in §65.84 of this subpart.

(b) The Department strongly encourages chief executives of States and local governments, if possible, to consult informally with the Attorney General and the Commissioner of INS prior to submitting a formal application. This informal consultation is intended to facilitate discussion of the nature of the assistance to be provided by the State or local government, the requirements of the Attorney General, if any, for such assistance, the costs associated with such assistance, and the Department's preliminary views on the appropriateness of the proposed funding.

(c) The chief executive of a State or local government shall submit an application in writing to the Attorney General, and shall file a copy with the Commissioner of INS. The application shall set forth in detail the following information:

(1) The name of the jurisdiction requesting reimbursement;

(2) All facts supporting the application;

(3) The nature of the assistance which the State or local government has provided or will provide, as required by the Attorney General, for which funding is requested;

(4) The dollar amount of the funding sought;

(5) A justification for the amount of funding being sought;

(6) The expected duration of the conditions requiring State or local assistance;