

DEPARTMENT OF JUSTICE**Office of Juvenile Justice and Delinquency Prevention****28 CFR Part 31**

[OJP (OJJDP)—1158]

RIN 1121-AA46

Juvenile Accountability Incentive Block Grants

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Final rule.

SUMMARY: This rule provides procedures under which an eligible State, or unit of local government that receives a subgrant from the State, is required to provide notice to the Attorney General regarding the proposed use of funds available under the Juvenile Accountability Incentive Block Grants (JAIBG) program. The JAIBG program is designed to promote greater accountability in the juvenile justice system. OJJDP has developed the "Juvenile Accountability Incentive Block Grants Program Guidance Manual" to assist States and units of local government in applying for, receiving, obligating, and expending JAIBG funds. The manual is available on OJJDP's homepage at www.ojjdp.ncjrs.org.

EFFECTIVE DATE: This regulation is effective April 21, 1999.

FOR FURTHER INFORMATION CONTACT: Rodney L. Albert, Deputy Director, State Relations and Assistance Division, OJJDP, 810 7th Street, NW, Washington, DC 20531. Phone: (202) 307-5924.

SUPPLEMENTARY INFORMATION:**A. Legislative Background**

On October 14, 1998, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) published proposed regulations in the **Federal Register**, at 63 FR 55069, for implementation of the JAIBG Program. The comment period ended November 13, 1998. Comments were received from two State agencies.

Pub. L. 105-119, November 26, 1997, Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1998, and for other Purposes (1998 Appropriations Act) appropriated \$250,000,000 for the Juvenile Accountability Incentive Block Grants (JAIBG) program described in Title III of H.R. 3, as passed by the House of Representatives on May 8,

1997. Subsequently, Pub. L. 105-277, October 21, 1998, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (1999 Appropriations Act) further appropriated \$250,000,000 to continue the JAIBG program.

B. Program Purposes

Funds are available under JAIBG in FY 1998, FY 1999, and each subsequent fiscal year as funds are made available, for State and local grants to support the following program purposes as set forth in section 1801(b)(1)-(11) of H.R. 3:

- (1) Building, expanding, renovating, or operating temporary or permanent juvenile correction or detention facilities, including the training of correctional personnel;
- (2) Developing and administering accountability-based sanctions for juvenile offenders;
- (3) Hiring additional juvenile judges, probation officers, and court-appointed defenders, and funding pre-trial services for juveniles, to ensure the smooth and expeditious administration of the juvenile justice system;
- (4) Hiring additional prosecutors, so that more cases involving violent juvenile offenders can be prosecuted and backlogs reduced;
- (5) Providing funding to enable prosecutors to address drug, gang, and youth violence more effectively;
- (6) Providing funding for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders;
- (7) Providing funding to enable juvenile courts and juvenile probation offices to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism;
- (8) The establishment of court-based juvenile justice programs that target young firearms offenders through the establishment of juvenile gun courts for the adjudication and prosecution of juvenile firearms offenders;
- (9) The establishment of drug court programs for juveniles so as to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to provide the integrated administration of other sanctions and services;
- (10) Establishing and maintaining interagency information sharing programs that enable the juvenile and criminal justice system, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts;

(11) Establishing and maintaining accountability-based programs that work with juvenile offenders who are referred by law enforcement agencies, or which are designed, in cooperation with law enforcement officials, to protect students and school personnel from drug, gang, and youth violence; and, (12) implementing a policy of controlled substance testing for appropriate categories of juveniles within the juvenile justice system.

C. Application Process

Eligible applicants in FY 1998, FY 1999, and each subsequent fiscal year as funds are made available, are States whose Governor (or other Chief Executive Officer for the eligible jurisdictions that are not one of the 50 States but defined as such for purposes of this program under 1808(3) of Title III of H.R. 3) certifies, consistent with guidelines established by the Attorney General in consultation with Congress and incorporated into OJJDP's Program Guidance Manual, that the State is actively considering (or already has in place), or will consider within one year from the date of such certification, legislation, policies, or practices which, if enacted, would qualify the State for a grant under section 1802 of H.R. 3. Specific information regarding section 1802 qualifications can be found in the JAIBG Program Guidance Manual.

The Chief Executive of each State is required to designate a State agency to apply for, receive, and administer JAIBG funds. The designated State agency will administer funds allocated to the State based on relative population of people under 18 years of age, with no more than 25% of the funds retained at the State level, absent a waiver, and with 75% or more allocated and subgranted to units of local government within the State. Specific information regarding "waiver" qualifications can be found in the JAIBG Program Guidance Manual.

JAIBG funds awarded to a State and expended at the State level or subgranted by a State to a unit of local government, other than funds set aside for administrative costs, may be expended only for programs or projects under one or more of the twelve purpose areas established by law.

D. Discussion of Comments

Comments were received from a State agency regarding issues relevant to the underlying JAIBG statute. These comments addressed issues involving the prosecution of juveniles in criminal court; implementing a system of graduated sanctions for juvenile offenders requesting that requirements of other OJJDP funded programs be tied

to local JAIBG grant awards; and, requesting clarification of match requirements. These comments were beyond the scope of this rulemaking but will be addressed in separate correspondence with the commenting agency.

Four additional comments were received from the above State agency, along with another State agency, that were within the scope of this rulemaking. These comments have been considered by OJJDP in the issuance of a final policy. The following is a summary of these comments and the response by OJJDP:

1. *Comment:* There is some concern with the additional burden of reporting to be placed on local governments and subgrantees.

Response: Use of the Follow-up Information Form to report to OJJDP on the expenditure of JAIBG funds will not be a cumbersome process. The form will require that the following types of information be provided on each unit of local government receiving JAIBG funds and on funds retained by the State for program expenditure:

1. OJJDP Award Number.
2. Award Amount.
3. Unit of local government or State agency name, address, city, State, zip, phone.
4. Contact person.
5. Jurisdiction type, i.e. State, County, Local, Regional.
6. Juvenile Crime Enforcement Coalition (JCEC) membership.
7. Verification that a Crime Enforcement Plan was developed.
8. Program Purpose Area Distribution of Funds (dollar amount allocated to each purpose area).

The Follow-up Information Form will be electronic and anticipated to be accessible via the Internet, thus reducing the burden required for the State to meet the reporting requirements. It is anticipated that the form will be very basic in nature and should not require undue burden to units of local government or the State agency responsible for submission.

2. *Comment:* States should be afforded the authority to fund projects without having to first seek programmatic fund drawdown approval from OJJDP. The FY 1998 JAIBG Guidance Manual specified a two phase implementation for States. Initially States could only access administrative funds while access to program funds required states to make a second submission to OJJDP. States could commit to program compliance in the FY 1999 application and inform OJJDP of any revisions throughout the year.

This approach would align JAIBG with other programs administered by OJJDP.

Response: States may drawdown any or all funds at any time after the date of award. OJJDP allowed that while States were preparing for the first year of implementation the Designated State Agency (DSA) could drawdown administrative funds (up to 10% of the total award) up to 180 days prior to drawing down program funds. The drawdown of program funds starts the statutorily required 24 month grant period. Allowing States to first drawdown administrative funds provided an additional six months for States to prepare to administer the program.

The authority to obligate program funds through the use of the Follow-up Information Form is similar to the submission of the Sub-Award Report Form utilized for the OJJDP Formula Grants Program.

3. *Comment:* Section 31.502(b) of the proposed regulation provides “* * * a State administering JAIBG funds must provide to OJJDP information that demonstrates that the State, or a unit of local government that receives JAIBG funds, has established a coordinated enforcement plan for reducing juvenile crime, developed by a Juvenile Crime Enforcement Coalition. The phrase “information that demonstrates” is subject to interpretation. A certification or an assurance would meet the requirement, without increasing the documentation requirements of the States or the units of local government.

Response: Submission of the Follow-up Information Form will satisfy the requirements of providing information.

4. *Comment:* Section 31.503 of the proposed regulation provides a mechanism for a State to report on the proposed use of funds by the State or by a subgrantee unit of local government. A “review” by OJJDP is identified. Since the proposed use of funds should be consistent with the plan as provided in § 31.502, could the Follow-up Information Form with a planning assurance meet the planning requirements as a single mechanism for submission to OJJDP?

Response: The review by OJJDP is only for funds retained at the State level. It is the responsibility of the DSA to review submissions by units of local government to determine if planning requirements have been met and funds are budgeted for expenditures within the twelve program purpose areas.

For funds expended at the State level, the Follow-up Information Form will include a planning assurance and will serve as the single mechanism for submission to OJJDP.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons:

(1) This rule provides the procedures under which eligible applicants are required to provide notice regarding the proposed use of funds available under the JAIBG program; and

(2) The award of such funds imposes no requirements on small business or on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the

ability of United States-based companies to compete in domestic and export markets.

National Environmental Policy Act

This rule has been reviewed in accordance with OJP's Procedures for Implementing the National Environmental Policy Act, 28 CFR part 61. The Assistant Attorney General for OJP has determined that this regulation does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to and approved by the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)).

List of Subjects in 28 CFR Part 31

Administrative practice and procedure, Grants.

For the reasons set forth in the preamble, 28 CFR part 31 is amended as follows:

PART 31—OJJDP GRANT PROGRAMS

1. The authority citation for part 31 is revised to read as follows:

Authority: 42 U.S.C. 5601 *et seq.*; Pub. L. 105-119, 111 Stat. 2440.

2. The heading for part 31 is revised as set forth above.

3. The designations "Subpart A through Subpart E" are removed and the headings remain as undesignated centerheadings.

§§ 31.1 through 31.403 and undesignated centerheadings [Designated as Subpart A]

4. Sections 31.1 through 31.403, and the undesignated centerheadings, are designated as subpart A and a new subpart heading is added to read as follows:

Subpart A—Formula Grants

§ 31.1 [Amended]

5. Section 31.1 is amended by revising "This part" to read as follows: "This subpart".

§ 31.200 [Amended]

6. Section 31.200 is amended by revising "This part" to read as follows: "This subpart".

§ 31.300 [Amended]

7. Section 31.300 is amended by revising "This part" to read as follows: "This subpart".

8. Part 31 is amended by adding new subpart B to read as follows:

Subpart B—Juvenile Accountability Incentive Block Grants

Sec.

- 31.500 Program purposes
- 31.501 Eligible applicants
- 31.502 Assurances and plan information
- 31.503 Notice of proposed use of funds

§ 31.500 Program purposes.

Funds are available under the Juvenile Accountability Incentive Block Grants (JAIBG) in FY 1998, FY 1999, and each subsequent fiscal year as funds are made available, for State and local grants to support the following program purposes:

(a) *Program purpose no. 1:* Building, expanding, renovating, or operating temporary or permanent juvenile correction or detention facilities, including the training of correctional personnel;

(b) *Program purpose no. 2:* Developing and administering accountability-based sanctions for juvenile offenders;

(c) *Program purpose no. 3:* Hiring additional juvenile judges, probation officers, and court-appointed defenders, and funding pre-trial services for juveniles, to ensure the smooth and expeditious administration of the juvenile justice system;

(d) *Program purpose no. 4:* Hiring additional prosecutors, so that more cases involving violent juvenile offenders can be prosecuted and backlogs reduced;

(e) *Program purpose no. 5:* Providing funding to enable prosecutors to address drug, gang, and youth violence more effectively;

(f) *Program purpose no. 6:* Providing funding for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders;

(g) *Program purpose no. 7:* Providing funding to enable juvenile courts and juvenile probation offices to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism;

(h) *Program purpose no. 8:* The establishment of court-based juvenile justice programs that target young firearms offenders through the establishment of juvenile gun courts for the adjudication and prosecution of juvenile firearms offenders;

(i) *Program purpose no. 9:* The establishment of drug court programs

for juveniles so as to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to provide the integrated administration of other sanctions and services;

(j) *Program purpose no. 10:* Establishing and maintaining interagency information sharing programs that enable the juvenile and criminal justice system, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts;

(k) *Program purpose no. 11:* Establishing and maintaining accountability-based programs that work with juvenile offenders who are referred by law enforcement agencies, or which are designed, in cooperation with law enforcement officials, to protect students and school personnel from drug, gang, and youth violence; and,

(l) *Program purpose no. 12:* Implementing a policy of controlled substance testing for appropriate categories of juveniles within the juvenile justice system.

§ 31.501 Eligible applicants.

(a) *Eligible applicants.* Eligible applicants in FY 1998, FY 1999, and each subsequent fiscal year as funds are made available, are States whose Governor (or other Chief Executive Officer for the eligible jurisdictions that are not one of the 50 States but defined as such for purposes of this program) certifies, consistent with guidelines established by the Attorney General in consultation with Congress and incorporated into OJJDP's Program Guidance Manual, that the State is actively considering (or already has in place), or will consider within one year from the date of such certification, legislation, policies, or practices which, if enacted, would qualify the State for a grant. Specific information regarding qualifications can be found in the JAIBG Program Guidance Manual.

(b) *Qualifications.* Each State Chief Executive Officer must designate a state agency to apply for, receive, and administer JAIBG funds.

§ 31.502 Assurances and plan information.

(a) In its application for a Juvenile Accountability Incentive Block Grant (JAIBG), each State must provide assurances to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), absent a waiver as provided in the JAIBG Program Guidance Manual, that:

(1) The State will subgrant at least 75% of the State's allocation of funds to eligible units of local government to implement authorized programs at the local level; and

(2) The State, and each unit of local government applying for a subgrant from the State, will expend not less than 45% of any grant provided to such State or unit of local government, other than funds set aside for administration, for program purposes 3-9 in § 31.500 (c) through (i) of this subpart, and will not spend less than 35% for program purposes 1, 2, and 10 in § 31.500 (a), (b), and (j) of this subpart, unless the State certifies to OJJDP, or the unit of local government certifies to the State, that the interests of public safety and juvenile crime control would be better served by expending the grant award for purposes set forth in the twelve program areas in a different ratio. Such certification shall provide information concerning the availability of existing structures or initiatives within the intended areas of expenditure (or the availability of alternative funding sources for those areas), and the reasons for the State or unit of local government's alternative use.

(b) Following award of JAIBG funds to a State by OJJDP, but prior to obligation of program funds by the State or of subgrant funds by a unit of local government for any authorized program purpose, a State administering JAIBG funds must provide to OJJDP information that demonstrates that the State, or a unit of local government that receives JAIBG funds, has established a coordinated enforcement plan for reducing juvenile crime, developed by a Juvenile Crime Enforcement Coalition (JCEC).

(c) State coordinated enforcement plans must be developed by a Juvenile Crime Enforcement Coalition consisting of representatives of law enforcement and social service agencies involved in juvenile crime prevention. To assist in developing the State's coordinated enforcement plan, States may choose to utilize members of the State Advisory Group (SAG) established by the State's Chief Executive under section 223(a)(3) of Part B of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, codified at 42 U.S.C. 5633(a)(3), if appropriate membership exists, or use or establish another planning group that constitutes a coalition of law enforcement and social service agencies.

(d) When establishing a local Juvenile Crime Enforcement Coalition (JCEC), units of local government must include, unless impracticable, individuals representing:

- (1) Police,
- (2) Sheriff,
- (3) Prosecutor,
- (4) State or local probation services,
- (5) Juvenile court,
- (6) Schools,
- (7) Business, and
- (8) Religious affiliated, fraternal,

nonprofit, or social service organizations involved in crime prevention.

(e) Units of local government may utilize members of Prevention Policy Boards established pursuant to section 505(b)(4) of Title V of the JJDP Act, codified at 42 U.S.C. 5784(b)(4), to meet the JCEC requirement, provided that each JCEC meets the membership requirements listed in paragraph (d) of this section.

§ 31.503 Notice of proposed use of funds.

The mechanism for a State to report on the proposed use of funds by the State or by a subgrantee unit of local government is by electronic submission of a "Follow Up Information Form" to be provided to each participating State. The purpose of this report is for the State to provide assurances to OJJDP that funds expended by the State and its subgrantee units of local government will be used for authorized program purpose areas. Although no actual program descriptions will be required, information about the distribution of funds among the authorized program purpose areas must be provided. Upon receipt and review of the "Follow Up Information Form" by OJJDP, States may obligate program funds retained for expenditure at the State level. Similarly, the State shall require that each recipient unit of local government submit its proposed use of non-administrative funds to the State prior to drawdown of subgrant funds to implement local programs and projects. Upon receipt and review of the local unit of government's proposed fund use, the State shall authorize the local unit of government to obligate local subgrant funds. The State shall electronically submit a copy of the local subgrant information to OJJDP, as provided in the award package, within 30 days of the date that the local unit of government is authorized to obligate program funds under its subgrant award.

Dated: April 12, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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