





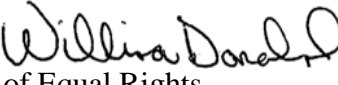
FEMA

**Grant Programs Directorate Information Bulletin
No. 414
January 19, 2017**

MEMORANDUM FOR: All State Administrative Agency Heads
All State Administrative Agency Points of Contact
All Urban Area Security Initiative Points of Contact
All State Homeland Security Directors
All State Emergency Management Agency Directors
All Eligible Transit Agencies
All Private Sector Transportation Security Partners
All Public and Private Sector Port Security Partners
All Tribal Nation Points of Contact

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SUBJECT: Civil Rights Review Process for Controlled Equipment Requests

This Information Bulletin (IB), IB 414, and associated review process applies to grant recipients¹ who request to use federal funds to purchase controlled equipment. The review process will be conducted when either civil rights violations are disclosed by the grant recipient or when Unmanned Aircraft Systems are requested (regardless of civil rights violations).

Background

For decades, the Federal Government has provided, and continues to provide, State, local, and

¹ For the purposes of this IB, the term grant recipient also refers to subrecipients unless otherwise noted. The civil rights review process is intended for those entities that have received a federal grant.

tribal law enforcement agencies (LEAs) with funding and equipment, either directly or indirectly, to support and augment LEA operations. Over the last several years, however, community members, LEA leaders, civil rights advocates, and elected leaders have voiced concerns about what has been described as the “militarization” of law enforcement due to the types of equipment at times deployed by LEAs and the nature of those deployments.²

In August 2014, President Obama ordered a government-wide review of military equipment provided to LEAs, and on January 16, 2016, based on the recommendations stemming from the Federal Review, signed [Executive Order \(EO\) 13688 “Federal Support for Local Law Enforcement Equipment Acquisition.”](#) to identify actions that can improve Federal support for the appropriate use, acquisition, and transfer of controlled equipment by State, local, and tribal LEAs. Among other important actions, EO 13688 emphasized the need for proper training on the part of LEAs regarding the protection of civil rights and civil liberties, notice to grant recipients regarding their obligations under Federal non-discrimination laws when accepting such equipment, and ensuring LEA compliance with civil rights requirements resulting from receipt of Federal financial assistance.

In response to EO 13688 and the [Recommendations Pursuant to Executive Order 13688 \(Report\)](#), the U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties (DHS CRCL) and the Federal Emergency Management Agency, Office of Equal Rights (FEMA OER) developed a process to review whether entities applying to purchase controlled equipment are in compliance with applicable Federal civil rights requirements. The purpose of this IB is to provide grant applicants, recipients, and subrecipients with guidance regarding this civil rights review process and the related civil rights disclosure requirements contained in the application form (FEMA Form 087-0-0-1). This IB builds upon IB 407a: Use of Grant Funds for Controlled Equipment and is applicable to all grants awarded by DHS/FEMA on or after October 1, 2015.

While EO 13688 speaks directly to LEAs, through IB 407a FEMA applies the same requirements and conditions to all recipients of controlled equipment regardless of the recipient’s designation as, or affiliation with law enforcement to ensure a consistent approach toward controlled equipment expenditures and use by all FEMA recipients.

Civil Rights Review Process

In implementing the recommendations contained in the Report, grant recipients are required to disclose through FEMA Form 087-0-0-1 the following civil rights information:

Has the requesting organization ever been in violation of a federal civil rights statute, nondiscrimination provision of any federal program statute (e.g., Sec. 308 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988), or any other programmatic term or condition related to nondiscrimination (e.g., requirements to produce civil rights complaint data or a signed civil rights assurance), or entered into a remedial agreement as a result of a civil rights investigation during the past 3 years?

² Law Enforcement Equipment Working Group, “Recommendations Pursuant to Executive Order 13688, Federal Support for Local Law Enforcement Equipment Acquisition” (May 2015).

If yes, specify the disposition and/or corrective action that was ordered and/or was, or will be, provided. Accordingly, grant recipients must disclose any finding by a Federal court or a Federal government agency, including an agency's civil rights office or the Civil Rights Division of the U.S. Department of Justice, and any efforts taken to cure the violation(s), as well as information regarding any remedial agreements. Grant recipients must also disclose any admissions of liability they have made regarding violations of Federal civil rights laws in their policing functions.

Disclosures of violations and other information in response to these requirements will be forwarded to FEMA OER and DHS CRCL for further review. This review process occurs after the award is made, during the period of performance, after FEMA receives the grant recipient's request (FEMA Form 087-0-0-1) to purchase controlled equipment. This review process will evaluate the grant recipient's current compliance with civil rights requirements, and whether the grant recipient has taken steps to remedy civil rights violations or compliance issues such that DHS can be assured that the organization will administer its programs and activities in a nondiscriminatory manner. Disclosures of particular concern include:

- Finding(s) of discrimination based on race, color, national origin³, or other protected categories made against grant recipient by a court or administrative agency in the past 3 years related to the use of controlled equipment.
- Finding(s) of discrimination based on race, color, national origin, or other protected categories made against grant recipient by a court or administrative agency in the past 3 years where the noncompliance has not been addressed through a resolution agreement or other arrangement.
- Noncompliance with a court order related to a finding of discrimination during the past 3 years.
- Grant recipient has entered into a remedial agreement or other arrangement as a result of a civil rights investigation or review during the past 3 years and has not yet put in place policies and procedures to address compliance issues and ensure nondiscrimination.

The review process will take into consideration efforts made by the grant recipient to address compliance issues and ensure nondiscrimination including, for example, the development of policies and procedures to ensure nondiscrimination and other efforts specific to the finding(s) or compliance issues.

Grant recipients that cannot demonstrate that they have addressed compliance concerns and complied with remedial agreements (if applicable) will have their requests for controlled equipment denied unless the grant recipient is able to demonstrate its good faith efforts to address identified compliance issues within 60 days of notification from FEMA of said issues. During this 60 day period, FEMA OER and DHS CRCL will make efforts to engage the grant recipient to obtain voluntary compliance and ensure that the grant recipient will be able to meet its civil rights obligations if the application is approved. FEMA may explore the use of special conditions, including requirements for post-award monitoring, to ensure nondiscrimination if the application is approved.

³ Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance.

Applications that are denied based on the grant recipient's inability to demonstrate their compliance within 60 days after notification from FEMA may be reconsidered if the grant recipient can affirmatively demonstrate their efforts to come into compliance. Reconsideration will be considered on a case-by-case basis as determined by FEMA with input from FEMA OER and DHS CRCL. Grant recipients whose requests for controlled equipment are denied, have the option to request that the funds be reprogrammed. This request must be in writing, and sent to the respective Program Analyst for processing. Grant recipients with approved requests for controlled equipment may be subject to post-award monitoring as necessary to determine compliance in accordance with the Department's nondiscrimination authorities.

Unmanned Aircraft Systems

Grant recipients requesting to purchase Unmanned Aircraft Systems (UAS) with FEMA grant funding must have in place, prior to expending funds, policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties. Those policies and procedures should be provided to FEMA.

Presidential Memorandum, *Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties, in Domestic Use of Unmanned Aircraft Systems*, issued February 20, 2015, requires that State, local, tribal, and territorial government recipients of Federal grant funding for the purchase or use of UAS for their own operations have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending funds. (Section 1(c)(vi) <https://federalregister.gov/a/2015-03727>).

CRCL and the DHS Privacy Office will review the relevant policies and procedures and take additional steps to ensure that policies and procedures consider best practices. This review process occurs after the award is made, during the period of performance, after FEMA receives the grant recipient's request (FEMA Form 087-0-0-1) to purchase controlled equipment. Grant recipients without the required UAS policies and procedures in place, and who refuse to take efforts to institute required policies and procedures, will be ineligible to purchase UAS with FEMA financial assistance. Grant recipients whose requests for controlled equipment are denied, have the option to request that the funds be reprogrammed. This request must be in writing, and sent to the respective Program Analyst for processing.

DHS/FEMA will continue to collaborate with federal agency partners to ensure that there is a consistent and reasonable approach to the restrictions placed on controlled equipment expenditures while continuing to support these investments when there is a justifiable need. Further, FEMA will continue to maintain an awareness of the evolving policy developments related to controlled equipment expenditures and keep grant recipients up to date on future developments.

Questions regarding this IB, whether the IB applies to a particular project, or guidance on controlled equipment expenditures may be directed to the appropriate FEMA GPD Program Analyst or the Centralized Scheduling and Information Desk at askcsid@fema.gov or 1-800-368-6498. You may also contact DHS CRCL directly at crcl@dhs.gov or 1-866-644-8360.