



U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Washington, D.C. 20531

OJJDP Policy:

**Monitoring of State Compliance with the Juvenile Justice
and Delinquency Prevention Act**

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A critical purpose of the Title II, Part B, Formula Grant program authorized under sections 221-223 of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) is to encourage states to protect the nation's youth from certain harmful conditions in the justice system. The Office of Juvenile Justice and Delinquency Prevention (OJJDP), charged with administering the Formula Grant program, envisions a nation where children are healthy, educated, and free from violence. If they come into contact with the juvenile justice system, the contact should be rare, fair, and beneficial to them. To that end, OJJDP is committed to protecting youth who come into contact with the juvenile and adult justice systems. As part of its responsibilities, OJJDP awards grants pursuant to the Formula Grant program, to support states¹ in achieving and maintaining compliance with the protections of the JJDP Act.

States must comply with the 28 state plan requirements described in section 223(a) of the JJDP Act to receive a Formula Grant award. These 28 state plan requirements are prerequisites for receipt of funding. If a state does not meet these prerequisites, then either its application will not be funded at all, or alternatively, its application would be funded with a 100 percent withholding condition prohibiting the state from accessing the Formula Grant award until necessary changes occur to bring it into compliance.

Within the 28 state plan requirements, there are four requirements that are deemed to be “core” because a state’s annual Formula Grant funding is reduced by 20 percent for each requirement with which a state is determined to be out of compliance. These core requirements are:

- (1) deinstitutionalization of status offenders (DSO) (section 223(a)(11));
- (2) separation of juveniles from adult inmates (separation) (section 223(a)(12));
- (3) removal of juveniles from adult jails and lockups (jail removal) (section 223(a)(13)); and
- (4) addressing disproportionate minority contact (DMC) (section 223(a)(22)).

This policy describes the information that states must submit to demonstrate compliance with the core requirements and that ensures that each participating state maintains an adequate system of monitoring as required in section 223(a)(14) of the JJDP Act. This policy also details the steps that OJJDP will undertake when conducting annual compliance determinations based on data submitted by the state and when assessing the adequacy of state monitoring systems. The procedures that states should use to implement this policy will be detailed in OJJDP’s Compliance Procedures Manual, which is currently in development.

Other existing Office of Justice Programs (OJP) and OJJDP policies and procedures detail guidance for administering the Formula Grant program and ensuring that grant funds are safeguarded and used for their intended purposes ([DOJ Financial Guide](#)).

¹ The term “state” refers to any state of the United States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

I. Annual Compliance Monitoring Determinations

Using fiscal year compliance monitoring information and data submitted by the state by February 28 of each year, unless granted an extension,² as part of the state's Title II Formula Grant application, OJJDP will conduct a comprehensive assessment and make a determination of whether the state is in compliance with each of the four core requirements. The comprehensive assessment will include verification of the data submitted, an analysis of the data submitted by the state to evaluate compliance with each of the four core requirements, and a review to assess the adequacy of internal controls over the state's compliance monitoring process for collecting and reporting compliance monitoring data. As summarized in the table below, final compliance determinations will be made by May 31 each year and will affect the state's Title II B Formula Grant award that will be awarded by September 30 of that fiscal year.

Table 1: Annual Compliance Monitoring Determinations Timeline

Step	Due Date	Illustrative Example
Reporting Period	October 1 – September 30	10/1/15-9/30/16
Compliance Data Due	February 28 (covering previous federal fiscal year)	2/28/17
Determination Letters Issued	No later than May 31 (covering previous federal fiscal year)	5/31/17
State Appeals Due	Within 30 days of receipt of determination	6/30/17
Projected Issuance of Title II Solicitation	March 30	3/30/17
Projected Due Date of Title II Grant Applications (State Plans)	June 30	6/30/17
Projected Award Date	No later than September 30	9/30/17

A. Title II Grant Application Requirements

In order to receive Title II Formula Grant awards, states are required to submit a Title II Formula Grant application. The grant application includes: (1) a comprehensive Three-Year Plan or annual update in years two and three of the three-year cycle, and (2) annual compliance data and supporting documentation.

This section identifies the materials states participating in the Formula Grant program must submit through OJP's Grant Management System (GMS) as part of its Title II Formula Grant application, as well as the compliance monitoring data and plans submitted by the reporting deadline of each year through OJJDP's Compliance Reporting System to be considered for Title II funding. OJJDP requires all of the requested information to inform OJJDP's assessment of state compliance with the core

² See Section 3 – Reporting Period and Due Date on page 6.

requirements and ultimately OJJDP’s funding determinations. A state’s failure to submit the required information to OJJDP by the deadline may result in the loss of Title II Part B funding for the relevant year.

1. Three -Year Plan and Annual Update

In the first fiscal year of the three-year cycle, states must submit (as part of the Title II grant application submitted through OJP’s GMS) a comprehensive Three-Year Plan. The Three-Year Plan is updated annually to report on any new or modified state programs, projects, and activities. More specifically, states must submit a Three-Year Plan that, among other things:

- addresses the Formula Grant program requirements [required by Section 223(a) of the JJDP Act and OJJDP’s Formula Grant regulations 28 CFR 31.303(c); 28 CFR 31.303(d); 28 CFR 31.303(e); and 28 CFR 31.303(j)];
- provides for an adequate system of monitoring adult jails and lockups, secure detention facilities, secure correctional facilities, court holding facilities, and nonsecure facilities, to ensure that states are in compliance with the DSO, Separation, and Jail Removal requirements;
- provides a system for the annual reporting of the results of such monitoring to the OJJDP Administrator [Section 223(a)(14) of the JJDP Act, and 28 CFR 31.303(f)];
- addresses the DSO, Separation, and Jail Removal requirements; and
- addresses the DMC requirement, including a narrative that indicates how the state is implementing, or planning to implement, the five-phase OJJDP DMC Reduction Model (Identification, Assessment/Diagnosis, Intervention, Evaluation, and Monitoring).

2. Compliance Data and Supporting Documentation

Annually, through OJJDP’s Compliance Reporting System, states must submit facility data for DSO, Separation, and Jail Removal.³ States must provide data for 85 percent of facilities required to report data, and demonstrate how they would extrapolate and report, in a statistically valid manner, data for the remaining 15 percent of facilities. A state that fails to comply with this requirement will be presumed to have an inadequate system of monitoring. As such, the state may have

³ Subsequent to submission of the annual compliance monitoring data, states will be required to submit copies of record data/logs from a sample of facilities. OJJDP will contact the state to make this request once the facilities have been selected.

receipt of its formula grant funding withheld, or may be deemed ineligible for a formula grant award. In addition, that state may also be scheduled to receive an immediate field audit or other actions as noted in Section III.B.

Compliance data and supporting documentation must include:

- A complete list of facilities required to report data;
- A list of all colocated facilities in the state;
- A list of all facilities that the state has monitored (in the relevant compliance year);
- A list of all facilities reporting data;
- A list of all facilities required to report data that have not actually reported, along with a plan for obtaining information from these facilities;
- A list of facilities in which core requirement violations occurred, with the number and type of violation identified;
- A list of facilities in which incidents occurred for which the state utilized the Valid Court Order (VCO) exception, including data on the number of incidents at each facility;
- An explanation of how the state verifies that the criteria for using the VCO exception have been satisfied (where applicable);
- Supporting materials that document the state's implementation of the five- phase OJJDP DMC Reduction Model (Identification, Assessment/Diagnosis, Intervention, Evaluation, and Monitoring);
- Relative Rate Index (RRI) tables for the state and for at least three local jurisdictions (pre-approved⁴ by OJJDP). If the juvenile justice system is administered at the state level (not county or local level), only statewide RRI tables are required. In these cases, the state must provide citations to state law or relevant legal support to demonstrate that courts, detention, correction, and other secure confinement facilities are administered at the state level; and
- A copy of the state's compliance monitoring manual.

3. Reporting Periods and Due Date

Annual compliance monitoring submissions are due from the state by February 28 of each year and must cover the previous federal fiscal year. In addition, states may request an extension for one additional month, to March 31, if they can show good cause for the extension. OJJDP will only accept and review data to demonstrate compliance from the states from the applicable reporting period. A state's failure to submit the required information to OJJDP by the deadline may result in the loss of Title II Part B funding for the relevant year.

⁴ OJJDP's Compliance Procedures Manual (in development) will detail the pre-approval process.

4. State Certification

The state bears the burden of ensuring that its submitted compliance data and supporting materials are complete and fully address the requirements for OJJDP compliance determinations. The state will be required to certify that the information submitted to OJJDP for compliance determination purposes is valid and accurate. This certification is done as part of the electronic submission through OJJDP's Compliance Reporting System and must be completed by the head of the designated state agency authorized to apply for Title II Formula Grant funds.

If OJJDP determines that the state has provided inaccurate data rendering invalid an earlier compliance determination that a state was in compliance, OJJDP will pursue measures to recoup any funds awarded to the state to which it was not entitled. In addition, if OJJDP believes that a state has submitted false data, OJJDP will notify the Department of Justice, Office of the Inspector General, regarding the possible submission of false data, and the receipt of federal funding as a result of the false data, pursuant to 18 U.S.C. § 1001 and/or the False Claims Act.

B. Annual OJJDP Compliance Determination Assessment

Using the compliance monitoring information and data submitted by the state, OJJDP will conduct a comprehensive assessment and make a determination of whether the state is in compliance with each of the four core requirements. The comprehensive assessment will include verification of the data submitted by the state, an analysis of the data submitted by the state to evaluate compliance with each of the four core requirements, and a review to assess the adequacy of the state's compliance monitoring system, as provided for in the state plan.

1. Compliance Data Verification

OJJDP will conduct a verification of compliance data by reviewing the data from a representative sample of records. This will be done through a randomized, stratified sampling process based on each state's list of facilities monitored for compliance. The sample will consist of at least one of each facility type in the state's monitoring universe (adult jails and lockups, secure detention facilities, secure correctional facilities, and court holding facilities), and will reflect the proportional makeup of the universe's different facility types. As noted earlier, once this sample is identified, OJJDP will contact the state and the state will be required to submit copies of record data/logs from the sampled facilities.

To ensure that compliance determinations are completed timely, the state is expected to provide the documentation requested within the timeframes specified by OJJDP at the time of request. An inadequate or untimely response from the state during this

verification process may result in an immediate field audit or other actions as noted in Section III.B.

2. Compliance Data Analysis

Using an objective, data-driven process, OJJDP will conduct an analysis of the compliance data submitted by the state to support compliance determination recommendations for DSO, Separation, Jail Removal, and DMC. This process will also assist OJJDP in identifying areas in which training and technical assistance to a state are needed.

3. Assessments of the Adequacy of the State Monitoring System

As part of the annual compliance determination process, OJJDP will conduct an annual review to assess the adequacy of each state's compliance monitoring system, including its process for collecting and reporting compliance monitoring data. Based upon a review of the state's monitoring compliance manual and other information submitted with the Title II Formula Grant application, OJJDP will review the state's:

- (1) Monitoring authority
- (2) Monitoring timetable
- (3) Compatibility with federal definitions
- (4) Policies and procedures for:
 - Identifying facilities to be included in the monitoring universe;
 - Classifying facilities included in the monitoring universe;
 - Inspecting facilities included in the monitoring universe;
 - Collecting and verifying facility compliance data monitoring;
 - Addressing identified instances of noncompliance with the four core requirements; and
 - Addressing barriers faced in implementing an adequate compliance monitoring system.

4. OJJDP Administrator Final Compliance Determinations

Based on a review of the state's compliance data with supporting materials and the compliance monitoring information the OJJDP Administrator will issue correspondence no later than May 31 regarding final compliance determinations, including, as necessary, specific details regarding why a state was determined to be out of compliance with any of the four core requirements or the required compliance monitoring system. The final compliance determinations made by May 31 will affect the state's Title II B Formula Grant award that will be awarded by September 30 of that fiscal year.

C. Out of Compliance Determinations and Denials of Funding

A state's Formula Grant funding will be reduced by 20 percent for each core requirement with which OJJDP has determined a state to be out of compliance. In addition, a state subject to any such reduction is ineligible to receive *any* of its remaining formula grant award unless one of two conditions are met:

- (1) The state agrees in writing, to submit a separate plan and budget as a condition of its award and to expend 50 percent of its remaining formula award for that fiscal year to achieve compliance with any core requirement with which it was found to be out of compliance or
- (2) By the time of its grant award, the Administrator determines that the state has both:
 - i. achieved substantial compliance with all core requirements with which it was found to be out of compliance and
 - ii. made through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance with the core requirements with which it was found to be out of compliance within a reasonable time.

For states to utilize option (2) the state must request and be granted a waiver of option (1) by the OJJDP Administrator. The request must be in writing and must be supported by documentation that addresses the two elements noted above in (2). Specific guidance regarding this process will be included in the OJJDP Compliance Procedures Manual, which is currently under development.

A state's application for Formula Grant program funding will be denied if OJJDP determines that the state has not provided for an adequate system of monitoring.

D. Appeals of Out of Compliance Determinations or Denials of Funding

Pursuant to 28 C.F.R. Part 18, a state that has been notified by OJJDP that it is out of compliance with one or more of the core requirements with an attendant reduction in funding, or a state that has been notified of a denial or suspension of Formula Grant funding for failure to provide for an adequate system of monitoring may appeal such suspension or denial of funding to the Office of the General Counsel for the Office of Justice Programs at OGC_OJP@ojp.usdoj.gov. The appeal request must be filed consistent with 28 C.F.R. § 18.5(c) which, as of the date of the implementation of this policy, requires that it be submitted in writing, within 30 calendar days of receipt of notification of the noncompliance determination or denial of funding.

Table 2: Appealable Decisions

OJJDP Decision	Appealable
Denial of formula grant funding for failure to provide for an adequate system of monitoring	Yes
Suspension of funds for failure to provide for an adequate system of monitoring	Yes
Reduction of funds for being out compliance with one or more of the core requirements	Yes

II. Oversight and Technical Assistance

OJJDP will provide training and technical assistance to assist states in complying with the requirements of the Formula Grant Program. In addition, OJJDP will conduct field audits to assess the adequacy of states' compliance monitoring systems.

A. Training and Technical Assistance

OJJDP administers a comprehensive program of training and technical assistance (TTA) for states and localities covering an array of substantive areas in juvenile justice and system improvement. OJJDP TTA is provided by subject matter experts (SMEs) from both the OJJDP staff and the larger juvenile justice field. TTA addressing core requirements includes both onsite and virtual assistance, and is designed to assist states and localities to achieve and maintain compliance with the four core requirements, and ensure the state has an adequate system of monitoring. States can request TTA at any time, and OJJDP staff will also identify states in which TTA should be prioritized, if for example, OJJDP's assessment of the adequacy of a state's monitoring system (see Section I.B.3) identifies needed improvements.

B. Field Audits

OJJDP will conduct field audits on a rotating schedule. The purpose of the field audits is to confirm state compliance monitoring activity and practices through direct onsite observation and file review, and to identify needed areas for technical assistance. OJJDP anticipates, with available funding and resources, that every state will receive a field audit every three years. Additional field audits may be conducted if, but not limited to the following circumstances:

- A state is unable to provide adequate documentation upon request to allow;
- OJJDP to verify the accuracy of submitted compliance data (see Section I.B);
- A desk review uncovers issues that must be addressed on-site;

- Other information is received by OJJDP indicating potential or actual issues or concerns related to compliance with any of the core requirements; or the assessment of the state’s monitoring system reveals inadequacies (see Section I.B.3). An example would be if the state fails to provide data for 85 percent of facilities required to report data, and to demonstrate how they would extrapolate and report, in a statistically valid manner, data for the remaining 15 percent of facilities.

If the field audit reveals significant inadequacies in a state’s monitoring system, or the state does not respond adequately or timely during the field audit process, the state may be subject to other actions as noted in Section III.B. The state will be notified of the outcome of the field audit in writing and will have the opportunity to respond.

III. Applicability

A. Integrity and Accountability

If OJJDP receives information that raises valid concerns regarding the integrity of a state’s compliance monitoring system, or if OJJDP determines that a state has an inadequate monitoring system; is out of compliance with one or more of the four core requirements; fails to comply with the other requirements of the state plan described in section 223(a); or does not respond adequately or timely to a request from OJJDP, the state may be subject to:⁵

- Reduction in funding by 20 percent for each core requirement with which a state is determined to be out of compliance.
- Ineligibility for a Title II Formula Grant award.
- Automatic freezing of funds until identified deficiencies have been resolved.
- Designation as a Department of Justice (DOJ) High-Risk Grantee for all DOJ grants until identified deficiencies have been resolved.
- Suspension or termination of funding, if appropriate, pursuant to established procedures in 28 C.F.R. Part 18. If OJP determines – through a field audit or based on other verified information – that a state received funding to which it was not entitled, there are various civil and criminal actions that may be considered which could include, but are not limited to, recouping the improperly awarded funds.

Also, as previously stated, if OJJDP determines that the state has provided inaccurate data rendering invalid an earlier compliance determination that a state was in compliance, OJJDP will pursue measures to recoup any funds awarded to the state to which it was not entitled. In addition, if OJJDP believes that a state has submitted false data, OJJDP will notify the Department of Justice, Office of the Inspector General, regarding the possible submission of false data, and the receipt of federal

⁵ Table 2 in Section I.B.5 indicates which OJJDP actions may be appealed.

funding as a result of the false data, pursuant to 18 U.S.C. § 1001 and/or the False Claims Act.

B. Adherence to this Policy

Extensions of deadlines, and exceptions to other administrative requirements in this policy, may be granted only by the OJJDP Administrator, and only when otherwise consistent with OJP policy. No waivers of statutory or regulatory requirements may be granted, even by the OJJDP Administrator, unless such a waiver is expressly authorized by statute or regulation.

ISSUED



6/19/2017

Eileen M. Garry
Acting Administrator
OJJDP

Date