



Office of the Administrator

March 13, 2023

MEMORANDUM FOR: Kristen Clarke
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U.S. Department of Justice

FROM: Katy Kale
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U.S. General Services Administration

SUBJECT: Executive Order 14074 – Section 20(b) Report

I. Introduction and Overview of Review

A. Purpose of Review

In May 2022, President Biden issued [Executive Order 14074](#), Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety. The EO seeks to promote accountability, transparency, and the principles of equality and dignity in policing and the larger criminal justice system. Accordingly, the EO mandates that all federal law enforcement agencies (“LEAs”) implement specific measures; requires all federal agencies to use various tools at their disposal—such as guidance on best practices, training and technical assistance, and grantmaking—to support reforms at state, tribal, local, and territorial LEAs that will strengthen public trust and improve public safety across the nation; and restores and expands upon the Obama-Biden Administration’s restrictions on the transfer of military equipment.

Under subsection 20(b)(i) of the EO, all agencies that provide grants to state, tribal, local, and territorial LEAs are required to review law enforcement-related grantmaking operations and the activities of grant recipients, to ensure that these agencies are providing sufficient oversight and accountability regarding civil rights violations by federally funded recipients. Further, the head of each federal agency that provides grants to state, tribal, local, and territorial LEAs must submit a report of its review conducted pursuant to subsection 20(b)(i) to the Department of Justice (“DOJ”),

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including any conclusions or recommendations. And, within 30 days following such review and clearance by DOJ, the head of each such agency shall make the conclusions of its review publicly available, as appropriate.

B. Focus Areas of Review

Because the U.S. General Services Administration (“GSA”) does not have grantmaking authority, GSA’s review under subsection 20(b)(i) focuses on other forms of federal financial assistance that the agency might provide to state, tribal, local, and territorial LEAs—namely, surplus personal property donation and public benefit conveyances of federal surplus real property for law enforcement purposes. See Part II.A.

C. Summary of Recommendations

As identified below in Part II.A.4, GSA is working to enhance the agency’s practices related to monitoring a transferee’s compliance with civil rights laws after real property has been conveyed.

II. **Overview of GSA’s Implementation and Enforcement of Title VI**

GSA is committed to enforcing civil rights laws that prohibit discrimination in programs or activities receiving federal financial assistance. The agency’s Office of Civil Rights (“OCR”) oversees and monitors GSA’s compliance with statutes that prohibit discrimination in federally conducted programs and federally assisted programs—including Title VI of the Civil Rights Act of 1964.

A. Federal Financial Assistance Provided to LEAs

Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives federal funds or other federal financial assistance (“FFA”). See 42 U.S.C. § 2000d. While Title VI does not define “federal financial assistance,” multiple agencies have issued regulations defining FFA as including: (1) the grant or donation of federal property and interests in property; (2) the detail of federal personnel; (3) the sale or lease of real property at below market value; and (4) any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. See, e.g., 41 C.F.R. § 101-6.216(e); 28 C.F.R. § 42.102(c). Importantly, however, FFA does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the federal government at market value, or programs that provide direct benefits. See Letter from Robert Kennedy, Attorney General, to Hon. John Sherman Cooper (April 29, 1964), reprinted in 110

Cong. Rec. 10075, 10076 (1964) (stating that “Title VI does not apply to procurement contracts, or to other contracts which do not involve financial assistance by the United States”).

1. Grantmaking

The clearest example of FFA is the award or grant of money. GSA, however, does not have grantmaking authority and therefore does not provide FFA through distribution of federal funds. Accordingly, GSA does not have any recommendations at this time with respect to grantmaking.

2. Donation of Surplus Personal Property

Donation of surplus personal property may also constitute FFA. GSA’s Office of Personal Property Management—through the Federal Surplus Personal Property Donation Program—helps federal agencies to dispose of surplus personal property that is no longer needed, including by donating that property to state, tribal, local, and territorial LEAs.

Section 12(a) of EO 14074 directs GSA to prohibit the donation of certain militarized equipment to state, tribal, local, and territorial LEAs. GSA is in the process of broadly implementing that provision by restricting donation of all enumerated items to *any* donee—not just state, tribal, local, and territorial LEAs. Accordingly, GSA and the State Agencies for Surplus Property (“SASPs”) will no longer donate the following property (to the extent that donation of such property is not already restricted by regulation or policy, which is the case for many of these items¹):

- Firearms of .50 or greater caliber;
- Ammunition of .50 or greater caliber;
- Firearm silencers, as defined in 18 U.S.C. § 921(a)(24);
- Bayonets;
- Grenade launchers;

¹ See, e.g., 41 C.F.R. § 102-40.175 (stating that GSA may “donate only surplus hand guns, rifles, shotguns, and individual light automatic weapons previously used by the Federal Government, with less than .50 caliber”).

- Grenades (including stun and flash-bang);
- Explosives (except for explosives and percussion actuated non-electric disruptors used for accredited bomb squads and explosive detection canine training);
- Any vehicles that do not have a commercial application, including all tracked and armored vehicles, unless the LEA certifies that the vehicle will be used exclusively for disaster-related emergencies; active shooter scenarios; hostage or other search and rescue operations; or anti-terrorism preparedness, protection, prevention, response, recovery, or relief;
- Weaponized drones and weapons systems covered by DOD Directive 3000.09 of November 21, 2012, as amended (Autonomy in Weapon Systems);
- Aircraft that are combat-configured or combat-coded, have no established commercial flight application, or have no application for disaster-related emergencies; active shooter scenarios; hostage or other search and rescue operations; or anti-terrorism preparedness, protection, prevention, response, recovery, or relief; and
- Long-range acoustic devices that do not have a commercial application.

Further, to implement Section 12(b), GSA and SASPs will cease donation of the following equipment—deemed controlled equipment by the Law Enforcement Equipment Working Group—to state, tribal, local, and territorial LEAs (again, to the extent that donation of such property is not already restricted by regulation or policy):

- Fixed Wing Aircraft;
- Rotary Wing Aircraft;
- Unmanned Aerial Vehicles;
- Armored Vehicles, Wheeled (e.g., Bearcat, MRAP);
- Tactical Vehicles, Wheeled (e.g., HMMWV);
- Command and Control Vehicles;

- Specialized Firearms and Ammunition Under .50-Caliber (excluding service-issued handguns, rifles, and shotguns);
- Explosives and Pyrotechnics;
- Breaching Apparatus (e.g., battering ram or similar entry device);
- Riot Batons (excluding service-issued telescopic or fixed-length straight batons);
and
- Riot Helmets and Shields.

In addition to GSA's broad implementation of Section 12, the agency maintains several controls—both before and after surplus personal property is donated—to prevent state agencies with civil rights violations from obtaining surplus personal property. Before surplus personal property is donated, the donee must submit [SF-123](#) "Transfer Order Surplus Personal Property," which requires the donee to agree that the program for which the donated property is being acquired "will be conducted in compliance with" GSA's regulations (41 C.F.R. § 101-6.2 *et seq.*) that "effectuate the provisions of Title VI of the Civil Rights Act of 1964 . . . to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from GSA." 41 C.F.R. § 101-6.202.

Then, after donation has occurred, GSA's OCR conducts periodic compliance reviews.² OCR reviews SASP compliance every four years—with about 25 percent of the states and territories being reviewed annually. During the review process, OCR collects information related to any complaints of discrimination filed with the SASP, ensures accessibility of the physical space, and requires the SASP to submit nondiscrimination assurance statements.³ Information is also gathered from any subrecipient (donee) via the [Nondiscrimination in Federal Financial Assistance Compliance Questionnaire](#), which requires disclosure of "any complaints (oral or written, informal or formal), lawsuits, charges, inquiries, etc." that have "been filed with any Federal, State, or Local agency, alleging that [the agency]—or any component thereof—discriminated against an individual or individuals on the basis of race, color, national origin, sex, disability or age."

² See 41 CFR § 101-6.210-1 (requiring GSA, from time to time, to review the practices of recipients).

³ See 41 C.F.R. § 101-6.209-2 (requiring each recipient to "keep such records and submit to the responsible GSA official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible GSA official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this subpart 101-6.2").

If a violation is found, OCR first seeks voluntary compliance, followed by actions to cure non-compliance—up to and including suspension or termination of, or refusal to grant or continue, the program’s access to financial assistance.

Because GSA has broadly implemented Section 12, and because the agency already has mechanisms in place for monitoring a donee’s compliance with civil rights laws, the agency does not have any recommendations at this time to further align its surplus personal property donation practices with EO 14074.

3. Detail of Federal Personnel

Detail of federal personnel may also constitute FFA. Under the Intergovernmental Personnel Act of 1970 (“IPA”), federal agencies may temporarily assign personnel to state, local, and tribal governments, among other organizations. See 5 U.S.C. § 3372. Within the past five years, GSA has detailed fifteen employees under the IPA, all of whom have been detailed to other federal agencies—not to state, tribal, local, or territorial LEAs. Accordingly, the agency has no recommendations at this time with respect to its employee detail practices.

4. Discounted Conveyance of Real Property

Discounted transfers of real property may also constitute FFA. GSA—through the Office of Real Property Utilization and Disposal (“RPUD”) within GSA’s Public Buildings Service—is responsible for the disposal of real property that is no longer mission-critical to federal agencies. When a federal agency no longer needs a property to carry out its program responsibilities, it reports the property as “excess” to its needs, and GSA first offers the excess property to other federal agencies that may have a program need for it. If there is no further need for the property within the federal government, the property is deemed “surplus” and may be made available—if authorized—for use through a public benefit conveyance (“PBC”).⁴ As a PBC, the property can be substantially discounted in price (including up to 100 percent reduction in fair market value).

As relevant here, the Administrator of General Services may convey to a state, political subdivision, or instrumentality of a state, federal surplus real property that will be used for law enforcement purposes. See 40 U.S.C. § 553(b)(2).⁵ Such a conveyance “shall

⁴ See, e.g., 40 U.S.C. § 553 (authorizing conveyance for correctional facility, law enforcement, and emergency management response purposes); 40 U.S.C. § 550 (authorizing disposal of real property for certain purposes); 42 U.S.C. § 11411 (authorizing use of unutilized and underutilized public buildings and real property to assist the homeless).

⁵ In the past five years, GSA has conveyed eight PBCs for law enforcement purposes.

be made without monetary consideration to the Federal Government,” and the deed of conveyance “shall provide that all of the property be used and maintained for the purpose for which it was conveyed in perpetuity.” 40 U.S.C. §§ 553(c), (d); *see also* 41 C.F.R. § 102-75.765 (defining “law enforcement” as “any activity involving the control or reduction of crime and juvenile delinquency, or enforcement of the criminal law, including investigative activities such as laboratory functions as well as training”).

However, before GSA conveys a PBC for law enforcement purposes, DOJ—the program-related sponsoring agency in this particular instance—must solicit applications and recommend a particular applicant to GSA for receipt of the conveyance. *See* 40 U.S.C. § 553(b)(2) (stating that GSA may convey property that “the Attorney General determines is required by the transferee . . . for law enforcement purposes”). In other words, while the decision to convey the property ultimately rests with GSA, DOJ must first determine that the applicant’s proposed use is a viable program. Accordingly, DOJ sets the terms and conditions of applications for law enforcement PBCs; reviews and approves (or rejects) such applications submitted by state or local governments; and, based on that determination, may recommend conveyance of a particular property by GSA for law enforcement use.

According to publicly available information, the Bureau of Justice Assistance (“BJA”), a component within DOJ, receives and reviews applications submitted for federal surplus real property to determine whether the use proposed by the state or unit of local government meets the requirements for law enforcement use, among other things.⁶ BJA then sends its determination to the disposal agency to consider a no-cost conveyance.

In 2007, GSA issued guidance “requiring sponsoring agencies to certify an approved applicant’s compliance with civil rights and non-discrimination requirements” prior to assignment of any federal surplus real property, and requiring sponsoring agencies to certify that the applicant has agreed to comply with civil rights laws after conveyance occurs. GSA recently recirculated that guidance on February 28, 2023, confirming that sponsoring agencies must certify that: (1) an approved applicant for receiving federal surplus real property is currently in compliance with civil rights laws; and (2) the applicant has agreed that it will not discriminate upon the basis of race, color, national origin, sex, age, disability, or religion in the use, occupancy, or lease of the property for the period during which the real property is used for the purpose under which the FFA is extended. Further, GSA intends to convene a meeting with all sponsoring agencies in FY 2023 to discuss this guidance and other relevant topics. And, in connection with this report, GSA has already communicated with individuals from DOJ’s Public Benefit

⁶ *See* Public Benefit Conveyance Program, U.S. Department of Justice (created Feb. 17, 2012), <https://bit.ly/3Ux45vs>.

Conveyance Program within the Office of Justice Programs to request that they begin reviewing DOJ's PBC application against GSA's prior guidance. Collectively, these actions will help to prevent state and local entities with civil rights violations from obtaining federal surplus real property—even before GSA begins to consider whether conveyance is appropriate.

When GSA eventually conveys a PBC for law enforcement purposes, the Administrator may include in the deed “additional terms, reservations, restrictions, and conditions that the Administrator determines are necessary to safeguard the interests of the Government.” 40 U.S.C. § 553(d)(2). As relevant here, under the Federal Management Regulation, GSA must include a non-discrimination clause in requisite conveyance documents, stating that the transferee “shall not discriminate upon the basis of race, creed, color, religion, sex, disability, age, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon.” 41 C.F.R. §§ 102-75.355, 102-75.360.

RPUD typically inspects each PBC for which it has compliance responsibility every 5 years—with approximately 20 percent of that PBC inventory inspected every year—to ensure that the property is being fully utilized in accordance with the approved program of use (in this case, for law enforcement purposes). These inspections are limited to reviewing the use of the conveyed real property, or related issues like liens or other encumbrances impacting title to the property. If a violation is found, actions are taken to cure non-compliance, up to and potentially including reversion of the property.

However, while reviewing the agency's practices in connection with this report, GSA discovered that it has not reviewed PBC transferees' post-conveyance compliance with civil rights laws in recent years. GSA's Office of Civil Rights is currently working with components across GSA—including the Public Buildings Service and the Office of the General Counsel—to enhance the agency's practices related to monitoring transferees' post-conveyance compliance with civil rights laws and is working to establish a schedule for conducting compliance reviews for current PBC transferees in fiscal year 2023.

5. Other Provisions of Assistance – Technology Solutions

Other agreements, arrangements, or provisions of assistance may also constitute FFA. GSA is a leader in technology modernization across the federal government and offers a number of solutions to help agencies build easy-to-use websites and digital services, as well as effectively manage IT, web, and digital services. However, these solutions are not available to state and local entities at a discounted rate.

Investments from the Technology Modernization Fund—an innovative funding vehicle that helps agencies improve information technology and enhance cybersecurity across the federal government—are not available to state and local entities. See Pub. L. No. 115-91, Sec. 1078(b)(3) (authorizing use of funds by federal agencies only). And GSA is not otherwise aware of a TMF investment being provided to a state, tribal, local, or territorial LEA.⁷

Under the Intergovernmental Cooperation Act (“IGCA”), GSA may provide specialized or technical services to state or local governments. See 31 U.S.C. § 6505(b). However, any such support is provided on a fully-reimbursable basis, which means that GSA does not provide financial assistance when it completes work under the IGCA. See 31 U.S.C. § 6505(b)(2). And, in any event, GSA is not aware of a state, tribal, local, or territorial LEA receiving support under the IGCA.

Accordingly, GSA has no recommendations at this time with respect to its provision of technology-related solutions.

III. Review Process and Stakeholder Engagement

A. Internal Review Process

Several components across the agency—as supported by the Office of the General Counsel—worked to determine whether GSA provides FFA to state, tribal, local, and territorial LEAs. The Office of Personal Property Management (within the Federal Acquisition Service) led GSA’s broad implementation of Section 12 of EO 14074, and the Office of Civil Rights helped to assess the adequacy of the agency’s current practices with respect to tracking compliance of FFA recipients. The Office of Human Resources Management gathered data regarding employee details. And the Office of Real Property Utilization and Disposal (within the Public Buildings Service) provided information regarding PBCs for law enforcement purposes.

B. External Stakeholder Engagement

Before implementing Section 12, GSA consulted with the National Association of State Agencies for Surplus Property to ensure that broad implementation was appropriate. As a result of that consultation and related research, GSA determined that impacts to LEAs would be minimal because: (1) donations of controlled equipment to LEAs are a small fraction of all property donated by GSA, with only 15 controlled items donated to LEAs when EO 13688 was in effect—representing .02 percent of all items donated by GSA

⁷ See Investments, Technology Modernization Fund, <https://tmf.cio.gov/projects/>.

during that time period; (2) of the 15 items GSA donated, the majority were tactical vehicles generated by the Department of Defense, which would have otherwise been available to LEAs through the DoD 1033/Law Enforcement Support Office program; and (3) broad implementation would not impact GSA's donation of commercially available vehicles.

IV. Recommendations

As identified above in Part II.A.4, GSA is currently working to enhance the agency's practices related to monitoring transferees' post-conveyance compliance with civil rights laws. GSA looks forward to implementing these recommendations and appreciates the opportunity to review its practices through implementation of EO 14074.