



U.S. Department of Justice
Federal Programs Branch
Civil Division
Washington, D.C. 20005

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VIA EMAIL

Lynn D. Eisenberg
Jacobson Lawyers Group
5100 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016
301-823-1148
Email: lynn@jacobsonlawyersgroup.com

RE: Request for Clarification, *RICADV v. Bondi*, Case No. 1:25-cv-00279 (D.R.I. 2025)

Dear Ms. Eisenberg,

I write in response to your request for a letter clarifying the applicability of (1) the Legal Services for Aliens provision in the Department of Justice (DOJ) Grants Financial Guide, and (2) the Federal Civil Rights and Nondiscrimination Laws Certification Requirement applicable to Victims of Crime Act (VOCA) Victim Assistance Grants. I have authority to respond on behalf of the U.S. Department of Justice.

(1) The Legal Services for Aliens Provision

The DOJ Grants Financial Guide applies to all grants from the Department’s grant-making offices: the Office of Justice Programs (OJP), the Office on Violence Against Women (OVW) and the Office of Community Oriented Policing Services (COPS Office). In September 2025, DOJ amended the DOJ Grants Financial Guide to include a new provision in the “Unallowable Cost” section of the Guide entitled “Legal Services for Aliens.”

The Legal Services for Aliens provision, which will take effect on November 14, 2025, states:

Except as indicated in the following sentence, costs of providing legal services (that is, professional services of the kind lawfully provided only by individuals licensed to practice law) to any removable alien (see 8 U.S.C. § 1229a(e)(2)) or any alien otherwise unlawfully present in the United States are disallowed and may not be charged against the award.

Grants Guide, Ch. 3.13. The provision then specifies that “[c]osts for legal services disallowed under the preceding sentence do not include costs for legal services”:

(1) to obtain protection orders for victims of crime (including associated or related orders (e.g., custody orders), arising from the victimization); (2) that are associated with or relate to actions under 18 U.S.C. ch. 77 (peonage, slavery, and trafficking in persons); (3) to obtain T-visas, U-visas, or “continued presence” immigration status (see, e.g., 8 U.S.C. § 1101(a)(15)(T) & (U); 22 U.S.C. § 7105(c)(3)(A)); or (4) as to which such disallowance would contravene any express requirement of any law, or of any judicial ruling, governing or applicable to the award.

Id.

Regulations currently in effect and applicable to VOCA Victim Assistance grants and grants made under the Violence Against Women Act (“VAWA”) provide that: “[v]ictim eligibility under this program for direct services is not dependent on the victim’s immigration status.” 28 C.F.R. §§ 94.103(a), 94.116 (VOCA Victim Assistance); *id.* § 90.4(c) (VAWA).

Accordingly, the Department of Justice agrees that, to the extent costs for legal services are incurred under VOCA Victim Assistance grants or grants made under VAWA, on behalf of any removable alien (*see* 8 U.S.C. § 1229a(e)(2)), or any alien otherwise unlawfully present in the United States, the costs of such services will not be disallowed pursuant to the Legal Services of Aliens provision because “such disallowance would contravene [the] express requirement of” those regulations, which have the force of law¹ and are “applicable to the award.” Grants Guide, Ch. 3.13.

(2) Federal Civil Rights and Nondiscrimination Laws Certification Requirement

You also requested clarification regarding whether the Federal Civil Rights and Nondiscrimination Laws Certification Requirement (as described in the VOCA Victim Assistance Grants Notice of Funding Opportunity (NOFO) and on the OJP “General Conditions” webpage) applies to subrecipients. The requirement states in full:

Federal Civil Rights and Nondiscrimination Laws (certification)

The recipient agrees that its compliance with all applicable Federal civil rights and nondiscrimination laws is material to the government’s decision to make this award and any payment thereunder, including for purposes of the False Claims Act (31 U.S.C. 3729-3730 and 3801-3812), and, by accepting this award, certifies that it does not operate any programs (including any such programs having components relating to diversity, equity, and inclusion) that violate any applicable Federal civil rights or nondiscrimination laws.

¹ *See Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 96 (2015) (“Rules issued through the notice-and-comment process are often referred to as ‘legislative rules’ because they have the ‘force and effect of law.’” (citation omitted)).

You asked whether a recipient (an entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program, as defined in 2 C.F.R. § 200.1), or a pass-through entity (a recipient or subrecipient that provides a subaward to carry out part of a Federal program, as defined in 2 C.F.R. § 200.1) must pass down the certification requirement to subrecipients. A recipient or pass-through entity is not required to pass down the certification requirement to its subawards with subrecipients. However, each recipient and pass-through entity is responsible for determining the appropriate requirements to include in its subawards, to ensure it meets its own commitments and responsibilities under the Federal Award. *See* 2 CFR § 200.300(a); *see also* 2 CFR § 200.332(b)(2)-(3)).

Sincerely,

Kathryn Barragan
Trial Attorney, U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005

Tel.: (202) 598-7696

Email: kathryn.e.barragan@usdoj.gov