

Dated: June 24, 1997.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

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## DEPARTMENT OF JUSTICE

[OJP(NIJ)-1125]

RIN 1121-ZA71

### National Institute of Justice Solicitation "Evaluation of the National Institute of Corrections Criminal Justice System Project"

**AGENCY:** Office of Justice Programs,  
National Institute of Justice, Justice.

**ACTION:** Notice of solicitation.

**SUMMARY:** Announcement of the availability of the National Institute of Justice solicitation "Evaluation of the National Institute of Corrections Criminal Justice System Project".

**ADDRESSES:** Proposals should be mailed to the National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

**DATES:** The deadline for receipt of proposals is close of business on August 19, 1997. Postmarked applications received after this date are not acceptable.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the solicitation, please call the National Criminal Justice Reference Service at 1-800-851-3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center at 1-800-421-6771.

**SUPPLEMENTARY INFORMATION:** The following supplementary information is provided:

#### Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201-03, as amended, 42 U.S.C. 3721-23 (1988).

#### Background

In March 1997, the National Institute of Corrections (NIC) began funding the Criminal Justice System Project (CJSP), created to assist criminal justice policymakers in eight State and local jurisdictions in developing and implementing new capacities for solving a wide range of corrections problems. Success is defined by developing and implementing purposeful, informed policies on the design, use, capacity, and cost of selected components of their correctional system for pretrial and sentenced offenders. Policies should be

the product of ongoing sanctioning policy development, system monitoring, and collaboration among criminal justice policymakers and the community.

The purpose of this solicitation is to evaluate the implementation of CJSP, focusing on the steps taken to develop a new correctional policymaking structure. Grantees will be expected to provide regular feedback to NIJ, CJSP, and NIC to enable program development and informative evaluation.

Interested persons should call the National Criminal Justice Reference Service, at (800) 851-3420 to obtain a copy of "Evaluation of the National Institute of Corrections Criminal Justice System Project" (refer to SL #000218). For World Wide Web access, connect to the NCJRS Justice Information Center at <http://www.ncjrs.org>, and click on Justice Grants. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301-738-8895. Set modem at 9600 baud, 8-N-1.

**Jeremy Travis,**

*Director, National Institute of Justice.*

[FR Doc. 97-16972 Filed 6-27-97; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OJP(BJA)-1116]

RIN 1121-ZA62

### State Criminal Alien Assistance Program

**AGENCY:** Office of Justice Programs,  
Bureau of Justice Assistance, Justice.

**ACTION:** Notice of final guidance and application information.

**SUMMARY:** This notice is to announce funding availability and final guidance on the application process for States and political subdivisions to obtain reimbursement for the incarceration of undocumented criminal aliens under the *State Criminal Alien Assistance Program*.

**DATES:** Application forms and supporting information will be mailed directly to eligible applicants on or before June 30, 1997; applications must be postmarked no later than August 30, 1997.

**ADDRESSES:** Applications should be submitted to the Bureau of Justice Assistance Control Desk, Office of Justice Programs, 633 Indiana Avenue, NW., Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Linda James McKay, SCAAP Coordinator, State and Local Assistance

Division, Bureau of Justice Assistance, or the Department of Justice Response Center, 1-800-421-6770 or 202-307-1480.

**SUPPLEMENTARY INFORMATION:** The following supplementary information is provided:

#### I. Background

##### A. Proposed Guidance

The State Criminal Alien Assistance Program (SCAAP) provides reimbursement to States and localities for costs incurred in incarcerating undocumented criminal aliens. The program is administered by the Bureau of Justice Assistance (BJA), a part of the Office of Justice Programs (OJP) in the Department of Justice, in conjunction with the Immigration and Naturalization Service (INS), which is responsible for verifying the undocumented criminal alien status of all individuals for whom records are submitted.

A notice of proposed guidance on the application process and eligibility criteria for States and political subdivisions to obtain reimbursement under SCAAP was published in the **Federal Register** on March 18, 1997 (62 FR 12848). In that notice, BJA solicited comments on the application procedures outlined therein. In this notice BJA responds to public comments and provides the final guidance on application procedures. However, actual application forms, including preprogrammed diskettes for filing information electronically, will be mailed directly to correctional agencies in eligible States and political subdivisions by June 30, 1997.

##### B. Statutory Authority and Agency Administration

SCAAP is authorized by section 241 of the Immigration and Nationality Act of 1990, as amended, 8 U.S.C. 1251(i). The Fiscal Year (FY) 1997 Omnibus Appropriations Act, Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996) amended the authorization for SCAAP in FY 1996, redesignating section 242 of the INA as section 241 (codified at 8 U.S.C. 1251(i); 8 U.S.C.A. 1231(i)) and making changes to the characterization of "undocumented criminal alien." These changes are discussed below and incorporated into this final guidance.

Section 241 gives the Attorney General the discretion, in the event of an appropriation, to either reimburse States and localities for costs incurred in incarcerating qualifying criminal aliens or to take such aliens into Federal custody. For FY 1997, the Attorney General has exercised her discretion to reimburse by delegating the authority

(through the Assistant Attorney General for the Office of Justice Programs) to the Bureau of Justice Assistance (BJA) to implement the program. BJA is a criminal justice grant making and administrative agency within the Department of Justice. It is only authorized to award and administer criminal justice grants and, thus, has no ability to take custody of undocumented criminal aliens being held at the State and local levels. Therefore, SCAAP is being administered as a reimbursement program. For FY 1997, \$500,000,000, less administrative costs, is available for reimbursement payments under SCAAP.

### *C. Importance of Collecting Data on Aliens*

As stated in the notice of proposed guidance, BJA has a responsibility to gather sufficient information to verify alien status and otherwise ensure that the data underlying its awards are complete and accurate. BJA has attempted throughout its administration of SCAAP to balance the burden on applicants to provide information relevant to and supportive of their claims for awards with the need to ensure that funds are being distributed in accordance with statutory criteria. To that end, in its first two years of operation, BJA has allowed applicants to provide, in good faith and on certification, limited data to support the eventual distribution of award funds.

As the program matures and appropriation levels for SCAAP increase, the focus of the program must move, as Congress intended, to reimbursing and verifying on an individual basis rather than continued reliance upon obtaining only partial or estimated information that may be easier for the applicants to provide. Thus, while BJA has been guided by the comments received to its proposed application requirements to ask only for what is essential for applicants to provide this year, we must adhere to requirements that further the longer term goal of an application process which collects information on individual incarcerated aliens using standardized coding schemes in easily retrievable electronic form.

Therefore this year, because of a change in the law which greatly expands the numbers and categories of incarcerated aliens who may be counted, the applicant must provide information demonstrating the requisite conviction level and type of offense for all aliens claimed for reimbursement.

Further, a change in the manner in which applicants are reimbursed for aliens for whom there is no positive match to INS records relieves applicants

of attempting to determine which inmates might be reimbursable. This allows them to submit records for all suspected alien inmates. INS will take the responsibility for ensuring that aliens are properly identified and their status verified.

Most importantly, the continued reliance on a one-day count, which provides only an estimate of bed spaces occupied by inmates who might be qualifying aliens, as an equivalent option to a methodology that leads to the actual identification of qualifying aliens, is no longer acceptable. Therefore, BJA is asking all applicants to provide data on as many aliens as they can determine were incarcerated in their facilities during the one-year reporting period for this year's reimbursement cycle; eligible applicants who cannot comply with this requirement may use a one-day count taken at any point during the application period. However, this method is likely to result in a much lower level of reimbursement than would the use of the primary method.

Since aggregating the numbers of aliens housed throughout the year will continue to be the method used for SCAAP, BJA strongly suggests that all jurisdictions begin now to keep track of all foreign born inmates entering and leaving their facilities, so that they may benefit from SCAAP more completely in FY 1998.

### *D. Achieving Parity Between State and Local Applicants*

A second goal for SCAAP this year, as suggested in the proposed guidance, is to impose the same requirements on both the States and the local subdivisions which apply. In the first year of SCAAP funding, only State departments of corrections were eligible. However, when the program was expanded last year to include local jails, some distinctions were made between State applicants and local applicants. This was based on the assumption of longer lengths of stay in State as opposed to local institutions.

Although this distinction is reasonable as a rule of thumb, and because there was some limited national data on lengths of stay for sentenced felons housed in jails, BJA factored this distinction into its formula in FY 1996 through the use of standardized lengths of stay for inmates counted by those applicants choosing the one-day count method. However, the lack of current, reliable data on lengths of stay of all types of inmates in all types of correctional facilities cannot support continued distinction among State and local agencies and BJA cannot

arbitrarily assign some standardized length of stay which is not adequately supported by data and thus may be unduly favorable to one type of applicant over another.

Therefore, beginning this year, both State and local applicants will be expected to comply with the same requirements for SCAAP application.

### **II. Comments Received and BJA Response**

Responses were received from 10 State departments of corrections and two county jail agencies. These responses addressed a number of topics and led to some changes in the approach that BJA will take during this year's distribution of SCAAP funds. In particular, respondents were concerned that requirements had been added or prior options restricted at the same time as the application period had been shortened. While, BJA is bound by changes in the governing legislation to add some restrictions and the proposed application period was not significantly shorter than in the prior two cycles, BJA is acutely aware of the increased amount of information required for the application and has made modifications to accommodate applicants while continuing to treat all eligible applicants fairly.

In particular, the need to ensure that applicants have a sufficient amount of time to provide the necessary information (as set forth in this announcement), has led BJA to extend the application period to 60 days and allow applicants to use their own offense coding system if use of the FBI's NCIC codes is not feasible. However, as indicated in the background section, BJA must ensure that the funds distribution model described herein furthers the intent and goals of the legislation governing this program.

The specific comments and BJA's response to them are as follows:

#### *Foreign Country of Birth Information.*

Several comments concerned the mandatory requirement to provide a foreign place of birth. In particular, the comments were that it is the responsibility of INS to determine alien status and place of birth is not necessary to this determination; that place of birth information may be unreliable because it is self-reported or because aliens will lie to avoid possible deportation; that alien status may be suspected but the exact foreign country is not known; and that inmates for whom no foreign country of birth is given will be dropped completely from the numbers claimed unless a positive match with INS records is made.

*Response.* BJA's clear responsibility under SCAAP is to reimburse only for qualifying aliens. We do agree that only INS should determine which inmates are aliens and which ones qualify for reimbursement under the alien status categories listed in SCAAP law. Therefore, BJA asks only that applicants demonstrate some reasonable basis that the inmates they count and submit are potentially eligible by providing a foreign country of birth. We have facilitated submission of this information by allowing applicants to use their current data entry codes or terminology and submit a data dictionary if place names are coded rather than spelled out.

Further, BJA allows submission of records of inmates without country of birth specified or even with U.S. birthplaces, if the applicant has some reasonable basis for suspecting alien status, although such submission are not encouraged and with the understanding that, if there is no positive match, these records will be dropped. Such inmates cannot be treated as "unmatched aliens" eligible for reimbursement because we would be likely be reimbursing for inmates not covered by the law. No change from the proposed requirements can be made with regard to this requirement.

*Qualifying Conviction Information.* A number of comments were received concerning the requirement for provision of information on the conviction or convictions that qualify the alien inmate to be included in the count. Specifically, some of those comments indicated that type of qualifying conviction was not required for the purposes of alien identification while others argued that since State institutions house only felons, there was no need for additional proof of their eligibility under this criteria (at least from State applicants). One respondent indicated that this provision would require his institution to obtain information on prior records which is not readily available or is costly to obtain, and is frequently inaccurate. Another questioned our definition of a felony. Eight respondents commented on the proposed requirement to use the FBI's NCIC codes for identifying offenses. The comments on NCIC coding primarily concerned lack of sufficient time to do the reprogramming necessary to make the conversion from the respondents' current offense coding schemes to NCIC codes, rather than an inability to make the conversion.

*Response.* A change in the governing legislation, applicable to FY 1997 and future applications, dropped the requirement that all aliens for which

reimbursement was made be sentenced felons and instead allows applicants to submit records for those inmates convicted of one felony or two misdemeanors, regardless of whether sentences have been imposed. Due to this major expansion in potential qualification of inmates for reimbursement, and consistent with our overall goal of obtaining more accurate and specific data on inmates for whom reimbursement is being made, BJA strongly feels it must ask for the level and type of offense that qualifies the inmate to be counted. The information requested has been reduced from that first proposed, however, to ask only if the qualifying conviction is a felony or two misdemeanors and what the offense code is, for the most serious conviction about which the applicant has information.

Further, for this award year, applicants will be allowed to use the offense coding scheme they currently have in place, as long as they submit a data dictionary (preferably in electronic form) which indicates the actual offenses and their corresponding codes. Applicants who can do so are strongly urged to use either the 2-digit or 4-digit NCIC code, and all eligible applicants are notified that BJA intends to move toward mandatory use of NCIC coding, perhaps as early as FY 1998. Thus, jurisdictions should be taking this type of conversion into account in their planning and systems programming.

With regard to which conviction offense should be coded, BJA will not specify any hierarchy among offenses (other than to choose the most serious if more than one qualifying conviction is known) nor set any time limit within which such offense must have occurred. Any qualifying conviction (one felony or the second misdemeanor) about which the applicant has information can be used. Thus, applicants who have limited information may rely on the "controlling" offense that resulted in the incarceration (if conviction has already occurred), on any known prior qualifying conviction, or on a qualifying conviction occurring during the reporting period. If a qualifying conviction exists, all of the time the inmate has been held in the applicant's custody can be counted, regardless of when the conviction occurred or whether or not a sentence of "time served" is subsequently imposed.

Although it is true that most State facilities house only felons, some States and all local facilities house misdemeanants. Indeed, some States run local facilities and others contribute to the costs of running such facilities. Thus, there are many variants from the

strict State/local hierarchy suggested by some comments received. BJA feels strongly the need to standardize the requirements placed on both categories of applicants rather than to continue to make assumptions more favorable and/or less burdensome to States than to local applicants.

One applicant argued that the definition of "felony" should be those offenses for which the possible sentence could be "one year or more" rather than "more than one year." The definition currently used is consistent with normal Federal usage and is correct. It should be noted, however, that this definition only applies if the applicant's State law does not have any established definition of felony and is applicable only to a few applicants.

*Other inmate record requirements.* One or more respondents had comments (some negative and some positive) about several other proposed inmate record requirements. One objected to the need for earliest possible release date. Others commented on the option to provide multiple records, generally indicating that they had no problem with this option.

*Response.* The request for earliest possible release date has been dropped. The option to submit multiple records for the same inmate is retained because this option allows applicants great flexibility to furnish additional identifying information on suspected criminal aliens, which increases their chances of having positive matches to INS records. Applicants may choose to submit only one record per inmate, but they are encouraged to submit as many records for inmates with legitimate indicators of alien status who have multiple names or dates of birth as they can in a cost effective manner. Applicants are reminded that multiple records must be traceable to a single inmate through use of an unique inmate number, which is a required data element.

*Scope of alien coverage under the law.* One respondent commented that the criterion for reimbursement should be "deportability" and another complained of the failure to automatically include "Mariel Cubans."

*Response.* BJA's criteria for inmate qualification and alien reimbursability come from a plain reading of the governing legislation. Therefore, while this program addresses criminal aliens, it does not provide reimbursement for every type of deportable alien, only for those who are clearly designated within the categories listed in the law itself. In particular, the inclusion or exclusion of "Mariel Cubans" under SCAAP is of concern to some applicants. A clear

reading of the statute does not recognize "Mariel Cubans" as a distinct category; thus, those aliens who might fit under that label are treated as are all other inmates whose names are submitted.

*Treatment of unmatched aliens.* Two of those commenting noted the proposed change in the way in which BJA and INS will determine the percentage of unmatched inmates for which applicants will receive reimbursement. Both indicated that they felt that the information given in the announcement was insufficient to allow comment and that an additional opportunity for comment should be allowed once the final methodology for this distribution is determined.

*Response.* Last year, alien inmates who could not be positively matched were allocated between reimbursable and nonreimbursable categories in the same ratio as those positively identified. In its earlier announcement of proposed guidance, BJA indicated that allocation of unmatched alien inmates would be based on a study which would determine how likely it was that the INS databases did not have information on alien inmates who were nonreimbursable. This study was to be based on the results of interviews of inmates that were conducted by INS field agents and the study had not been concluded at the time the initial announcement for comment was made.

The study indicated that approximately 95 percent of those interviewed who had no previous record in any INS database were determined to be undocumented aliens. Thus, this year applicants will be given credit for 95 percent of the unmatched inmates with valid foreign countries of birth. Since this percentage is higher than any ratio applied to any applicant's unmatched inmates in either prior year, BJA believes that no applicant will be prejudiced by its decision not to provide an additional comment period on this one issue.

*Inmate counting methodology.* A frequent comment made about provision of inmate records concerned the counting methodology to be used. BJA proposed to essentially eliminate the "one-day count" that had been used in the first two funding years in favor of an aggregate count of all alien inmates in the applicant's custody during the year-long reporting period (July 1, 1996 through June 30, 1997).

State agencies commenting indicated that providing a total or aggregate count of inmates, especially with provision of individual lengths of stay, would require extensive reprogramming that would take time and require, in some cases, searching several data bases, not

all of which are under the direct control of the respondent. Almost unanimously, the 10 State comments asked that the one-day count be retained as a equal option to aggregate counting, with continued credit for a full year's slot (bed space) for each alien counted.

One State and one local respondent suggested that an alternative technique of sampling over some time period would be preferable to counting every inmate for the full year or suffering a significant reduction in total reimbursement due to use of a one-day count. One of the two local respondents indicated that it was unlikely that they could provide aggregate counts because they were not automated and thus expected to be seriously prejudiced in terms of reimbursement.

However, as in the case of utilizing NCIC codes, most respondents indicated that make the move to aggregate counting would require reprogramming that would be time-consuming, rather than indicating that it would be impossible to comply with the requirement.

*Response.* When working only with State agencies in the FY 1995 funding year, BJA had allowed a one-day count and gave applicants credit for having the number of inmates counted every day during the reporting year. That is, each reimbursable alien inmate verified by INS was treated as a full-time equivalent on the theory that most State correctional beds were always filled and that sentenced felons were likely to be incarcerated for at least a year.

Those same assumptions could not be made for local jails, which became eligible under the program in FY 1996. However, due to a foreshortened application period and the lack of definitive information on numbers, types, and lengths of stay of aliens in local jails, the one-day option was again allowed in FY 1996. Local jails were allowed to claim only 152 days for each alien inmate determined to be reimbursable, however, which was the average length of stay determined in an unrelated national survey results for sentenced felons housed in local jails. State agencies continued to receive a full year's credit.

The aggregate count option (counting all aliens incarcerated during the reporting year) was also allowed in FY 1996, and approximately one-fourth of the State correctional agencies and two-thirds of the local applicants chose that option. While the total numbers of applicants was small, the high use of aggregate counts in FY 1996 was encouraging and the evidence on actual lengths of stay was illuminating. For both State and local agencies, the actual,

average lengths were much shorter than the standardized figures allowed.

More importantly, in proposing to move to aggregate counts as the preferred option in FY 1997, BJA was motivated by concerns about perpetuating a distinction between State and local agencies in counting methodology and overall reimbursement formula which might not be fair. Further, the use of standard lengths of stay emphasized "bed spaces" rather than individual incarcerated aliens.

In balancing the desire for better information against the limited time that it can allow applicants to provide the information required, BJA has decided to allow applicants a longer time period for application, and retain the admittedly less favorable one-day count option, for both State and local applicants to use only if they are unable to reconstruct data about inmates released from their facilities prior to the end of the official reporting period. Applicants selecting this option may choose any day during the application response period for the count, up to the day the application is submitted, but will receive credit only for days the counted inmates were incarcerated during the reporting period.

An intermediate option is also being allowed. This is to provide less than full year data on those inmates, housed by the applicant during the one-year reporting period, for which the applicant still has sufficient information to supply mandatory data items. This option may help some local jails that keep inmate data for limited periods. Note that these less than full year counts will not be used to credit applicants with estimated counts for the full year, but should certainly increase the number of inmates for whom these applicants may receive reimbursement.

However, in all cases, applicants will be expected to provide full data on every inmate counted, including dates of entry and (if applicable) release from custody. All applicants are notified that BJA intends to move toward aggregate counting methodology and eliminate the one-day count entirely in FY 1998.

*Calculating lengths of stay for inmates counted.* Related to the count methodology issue was the difficulty of calculating lengths of stay falling with the year-long reporting period. Several respondents suggested it would be easier for them if they could give admission and release dates and have BJA or INS do these calculations.

*Response.* BJA and INS will accede to this request. As part of its review of inmate records, INS will do all calculations of the lengths of stay for all inmates submitted, regardless of

whether applicants use the aggregate or the one-day count method. These calculations will result in a final number of inmate equivalents for reimbursement purposes. For each inmate counted, the applicant will need to provide only the date he or she entered custody and the date he or she was released from custody (if the inmate has been released), regardless of whether these dates fall within the reporting year (July 1, 1996, through June 30, 1997).

Having the actual date upon which the inmate entered custody will also allow INS to properly search for aliens qualifying under the "subject of proceedings" provision in the SCAAP law. Applicants should note that the release date requested is not a projected date but an actual date, and only applies if the applicant no longer has custody of the inmate. If the inmate is still in custody on June 30, 1997, or for those doing a one-day count, on the date of the count, this data field should be left blank.

*Length of the application period.* A number of comments were received indicating that the proposed applicant response time of at least 30 working days would not be sufficient to meet the various requirements proposed. Time periods from 60–120 days were mentioned as being necessary for reprogramming required to do aggregate counting and/or code qualifying offenses using NCIC codes.

*Response.* Despite the modifications BJA is adopting as a result of the comments received, BJA understands that an application period longer than 30 days may be necessary. Therefore, the due date has been moved to August 30, 1997. This should also accommodate those respondents who indicated that they would be pressed to finish by mid-July an aggregate count ending on June 30, 1997. Any additional delay in the deadline for application must be balanced against the desires of applicants to receive reimbursement as soon as possible. It is hoped that this extension of time will still allow final awards to be made in December 1997.

To facilitate this process, application kits will again be sent directly to correctional agencies that will have the necessary information. However, BJA wishes to emphasize that an agency's parent governmental entity (e.g., State, county or city) is the official eligible applicant and the correctional agency may only apply by delegation from that entity. An official delegation will be required in order to complete the application.

*Cost per inmate data requirements.* Four comments addressed aspects of the

cost data required. Of these, three commentators indicated they had no problems with the cost data calculation. The fourth respondent criticized the method for making this calculation, the prohibition against inclusion of capital expenses, and the timing of the cost data. In particular, this respondent argued that applicants should be able to claim all alien inmates for whom they have legal responsibility, regardless of where they are housed. This commentator also indicated that facility costs are part and parcel of what jurisdictions must pay to house inmates and by not including them, the Federal Government is not reimbursing for all costs of housing undocumented aliens. Finally, this respondent was concerned that cost data for the reporting period would not be available by the date the application was due.

*Response.* In general, BJA has required and received the same type of cost information under essentially the same rules in both prior years. The method required gives applicants the flexibility to use readily available cost-per-inmate data that is not restricted to the cost of incarcerating the inmates counted for reimbursement. Only routine operating costs are allowed, but applicants can claim the full costs of running all facilities in their system. In recognition of the differences in accounting methods and fiscal years, BJA allows applicants to use the most current fiscal data available to them, including prior year data.

In FY 1995, applicants were allowed to claim a standard percentage over routine operating costs to cover nonroutine costs. However, capital expenses and other nonroutine costs do not fall evenly over all applicants and their inclusion could radically increase the cost per inmate for some applicants in some years. Because funds are limited and will not cover all costs claimed by applicants, BJA continues to believe that the restriction to the "routine operating costs" approach is fairer to all eligible applicants.

Recognizing that inmates move among institutions frequently and that many correctional agencies have inmates housed out of their jurisdiction or are housing inmates for other jurisdictions, BJA adopted an approach which offsets costs as the means of controlling for a number of possible situations in which the legally responsible agency is not the immediate custodian of an inmate. Applicants add in payments they make to other jurisdictions or private vendors for housing their inmates elsewhere and deduct payments to them for housing other jurisdictions' inmates. By using this method, BJA allows applicants to

count all otherwise qualifying inmates actually housed in their institution during the reporting period without incurring duplication of costs or requiring cost information to be particularized to the individual inmates counted.

BJA does not feel it necessary or appropriate, based on these comments, to change the basic requirements for inmate costs. BJA is providing more detail on the types of situations which might arise in making these calculations to address issues that have occurred in the past 2 years of program administration.

*Other comments.* One comment questioned the need for requiring applicants to give assurances that they are complying with a wide range of Federal laws that have no relevance to the specific goals of SCAAP or the rules governing use of SCAAP funds. Two noted a desire to have feedback from INS as to specific aliens positively identified in prior award cycles. One respondent pointed out potentially confusing terminology regarding qualifying aliens.

*Response.* While SCAAP is unusual in that it provides reimbursement payments that, once legally obtained by the applicant, can be used by the applicant for any legitimate purpose, it remains a Federal grant program providing funds to eligible applicants. As such, applicants must adhere to standard Federal grant eligibility requirements, which include adherence to Federal laws. If applicants cannot meet these criteria, they are not eligible to receive Federal funds, no matter the purposes to which they plan to apply their reimbursement. Thus, all standard Federal assurances and certifications must be made at the time of application.

After the FY 1995 awards, INS did provide applicants with information on those aliens who were positively identified, whether or not the inmates had been determined to fall within a reimbursement category. Such information is not necessary to make the FY 1997 application, however, since there will be no reliance on the ratio of reimbursable to nonreimbursable aliens in determining the portion of unmatched alien inmates for which FY 1997 reimbursement will be made. However, this information may be of use to the applicant and INS plans to provide this information, as soon as feasible, to those applicants who received FY 1996 awards and who receive FY 1997 funds.

BJA and INS would like to thank all respondents for their thoughtful comments. This feedback has assisted

us in developing our final guidance for FY 1997, which is set forth below.

In addition, BJA would encourage any eligible applicants, and particularly local jurisdictions as few in this category responded to the earlier announcement, to provide BJA with comment on their experiences in making application in FY 1997 or their reasons for not making application, should that be their choice. Such comments can be submitted to the address for applications shown in the beginning of this notice, to the attention of Linda McKay, SCAAP Coordinator.

### III. Final Application Guidance

Correctional facilities in eligible jurisdictions will receive an application kit that will include the following general guidance as well as proper forms and other materials with instructions for completing the forms, formatting data, and mailing in the application. Thus, the following information concerns only the essential requirements for application, as were previously announced and/or as modified from that prior announcement.

#### A. Eligible Applicants

*Eligible applicants are States and political subdivisions of States (hereafter, "localities" or "subdivisions") that exercise authority with respect to the incarceration of an undocumented criminal alien in a facility that provides secure, overnight custody of inmates for periods extending beyond 72 hours. Only one application may be submitted by each State or locality; therefore, cost and inmate information from all facilities operated by a single applicant must be consolidated into a single application. A State correctional agency which directly operates some or all jails located in its political subdivisions should consolidate data from all such facilities.*

*The applicant may be either the chief executive officer (CEO) (e.g., governor, county executive, mayor) of the political entity or the head (e.g., director, commissioner, sheriff) of the correctional facility in that jurisdiction, pursuant to a delegation from the CEO. Such delegation must be made in writing and be submitted to BJA by the CEO or correctional agency head applying on behalf of the jurisdiction. A copy of a valid delegation previously obtained and submitted to BJA for the purpose of SCAAP will be acceptable.*

*Awards will be made to the place of business of the signatory on the application, regardless of designation. That is, if the county board chair (or county manager, county auditor, etc.) signs the application, the formal*

*applicant is the county, at the address of the county office. If the county sheriff signs the application pursuant to delegation from the county board, the formal applicant is the sheriff, and the award will go directly to the address of the sheriff (or the county correctional facility). Jurisdictions that want awarded SCAAP funds to be deposited into an existing governmental bank account or Letter of Credit (LOCES) account rather than into the correctional agency's account should have the CEO or a designated governmental officer (e.g., county manager or chief financial officer) sign the application and use their place of business as the official applicant name and address.*

For the purposes of the remainder of this guidance, "applicant" refers to the head of the correctional facility housing the alien inmates, as this facility is the source of both inmate and cost data required for the application.

#### B. Reimbursable Inmates and Length of Stay Calculation

*Applicants will be expected to submit records on all inmates in their custody who have a foreign country of birth and who have been convicted of a felony or two misdemeanors. Applicants should not screen out aliens known or believed to be nonreimbursable. The methodology for determining reimbursability of unmatched inmates (as discussed below in subsection D, "Verification of Inmate Data") will not depend on the ratio of reimbursable to nonreimbursable inmates, as was the case in prior years. This change means that applicants will not be required to make any judgments about the potential reimbursability of their incarcerated aliens.*

*Not all foreign-born inmates whose records are submitted will be determined to be reimbursable aliens under the law. To be reimbursable, an inmate must:*

- *Have a foreign country of birth.* The record submitted must contain the name of that foreign country. See the discussion under subsection D below for submission of suspected foreign-born inmates who do not self-report a foreign country of birth.
- *Fall within one of three categories specified in the statute:*

- *Entered the United States without inspection* or at any time or place other than as designated by the Attorney General;

- *Was the subject of exclusion or deportation proceedings at the time he or she was taken into custody* by the State or a political subdivision of the State; or

- *Was admitted as a nonimmigrant and at the time he or she was taken into custody* by the State, or a political subdivision of the State *has failed to maintain the nonimmigrant status* in which the alien was admitted (or to which it was changed) or to comply with the conditions of any such status.

In determining who is the "subject of" proceedings under the second category, an alien would be considered eligible to be counted for reimbursement if the charging document had been issued by INS prior to that alien's entry into the applicant's custody. The charging document need not be served against the alien nor filed with the immigration court. Alien inmates with final orders of deportation or exclusion will also be considered the "subject of" proceedings. Cubans who entered the United States as part of the 1980 Marielito boatlift ("Mariel Cubans") are *not* separately eligible and will not automatically be included for reimbursement; rather, Cuban inmates, as all other inmates, will be reimbursable only to the extent they fall under one of the categories listed above.

- *Have been in the applicant's custody at some point between July 1, 1996, and June 30, 1997.* Applicants should count and report on all inmates who are otherwise qualifying under this section who were in their custody during this period and for whom they can provide the mandatory data elements described in C below. If correctional agency records are not adequate to provide information on inmates housed for the full year, the applicant may report on any lesser time period *within* this year-long reporting period. These less-than-full-year counts will *not* be used to credit applicants with higher estimated counts for a full year; rather, applicants will receive credit only for individual inmates for whom complete records are submitted. However, this intermediate option should certainly increase the number of inmates for whom these applicants may receive reimbursement.

A one-day count option is allowed, but applicants should use this method *only* if it cannot recreate accurate data for inmates who left the institution prior to the end of the reporting period. Applicants using this one-day count will receive credit only for those inmates counted who are determined to be qualifying aliens and only for the lengths of stay of these individual inmates that occurred within the reporting period. Applicants using this option may choose any day up to the day of application submission to make the one-day count.

Applicants are asked to provide, for each inmate counted, the date the inmate first came into the custody of the applicant and the date the inmate was released from custody (if already released). If an inmate is still in the applicant's custody at the end of the reporting period (or at the time of the one day count if that option is chosen), the field for release date should be left blank. All calculations of lengths of stay will be made by INS. Note that a cap of 365 days will be imposed on the number of days an applicant may claim for a single inmate.

Applicants will be asked to report, on the official application form, the count option chosen and the time period (up to 365 days) for which they were able to provide complete inmate records. Further instructions will be contained in the application kit.

- *Have been in the applicant's custody for a period exceeding 72 hours.* Police "lockups" and similar holding facilities are excluded, and applicants are not expected to submit records for persons held pending arraignment on new charges who are then released and not again incarcerated. However, once an applicant has exercised custody over an inmate beyond 72 hours, all time in custody (up to 365 days per inmate) will be credited in the length of stay calculation for an otherwise qualified alien, as defined in this section.

- *Have one felony conviction or two misdemeanor convictions.* Qualifying conviction(s) can occur prior to entry into the applicant's custody or be the result of charges that led to that incarceration. Once a conviction does occur, all time in custody during the specified one-year reporting period may be counted, even though some of the time in custody may have occurred prior to the conviction and even though no final sentence has been imposed. This interpretation recognizes that in most cases, once a conviction occurs, the eventual sentence takes into account "time served," which converts the pretrial custody period into part of the final disposition for purposes of fulfilling the sentence. Although some States have laws automatically requiring this action, in most, the sentencing authority is given this discretion.

*Please note that, in either case, the applicant must be able to determine and document that the qualifying convictions have taken place by providing indication of level and type of offense. Thus, particularly for those inmates for whom the qualifying conviction(s) occurred prior to entry into applicant's custody, the applicant must have ready access to accurate and complete criminal history information.*

For the purposes of this determination, the applicant should follow its own State law as to what constitutes a felony or misdemeanor and what actions constitute a valid conviction. If a State has no set definition of "felony," a felony should be considered any offense for which the potential sentence that could be imposed upon conviction is more than one year.

### C. Specification for Inmate Records

The applicant will have two options for providing information about inmates: (1) Applicants may use their own inmate data system to produce a properly formatted data file, or (2) applicants may reenter data into a database shell on a diskette to be provided by BJA. For applicants choosing the first option, all inmate data submitted must be in ASCII format, in fixed length fields. Further, unless a specific exception is noted below, all data fields must be completed. *Failure to provide the requested data in the proper format will result in exclusion of the record from the verification process.* Exact information on the order and length of data fields will be provided in the application kit, which will be mailed to eligible jurisdictions.

The following inmate data will be requested:

- *Alien ("A") number.* An "A" number is an 7-, 8-, or 9-digit number that may have been assigned to an inmate by INS and may or may not be known to the applicant. If no A number is available, the applicant may leave this field blank.

- *First, middle, and last names of the inmate, including all aliases.* A separate record may be submitted for each alias, but each record must repeat all required information in the proper data fields as if it were the only record being submitted for that individual.

- *Date of birth.* If more than one date of birth is provided, a separate record should be used for each date, as in the case of different names.

- *Unique identifying number for each inmate.* This number will allow INS to check separate alias or date of birth records, but avoid duplicate counting of the same inmate. The number is assigned to that inmate by the applicant and will generally be used by the applicant for other identification purposes.

- *Foreign country of birth.* Applicants should supply the actual name of the foreign country (up to the first 10 letters of the name will be allowed) or use a coding system. If a coding system is used, applicants must submit documentation of the codes as part of

their applications, preferably in electronic form as a separate file on the inmate diskette submitted.

- *Date upon which the alien entered into the applicant's custody and date of release, if the inmate has already been released.* These dates will be required for all inmates, not just those potentially qualifying under the "subject of proceedings" category and will be used to calculate the length of stay of inmates counted. For inmates still in applicants' custody at the end of the reporting period (or date of the one day count), the date of release field can be left blank. Unlike last year, no predetermined, standard lengths of stay will be allowed. Both State and local facilities will be expected to comply with this requirement.

- *Type and level of crime of the qualifying conviction(s).* Applicants will be expected to code the level of the qualifying conviction (using "F" for one felony or "M" for two misdemeanors) and code the actual type of offense for which a conviction has occurred. The preferred coding scheme for the latter is the Federal Bureau of Investigation's National Criminal Information Center (NCIC) coding scheme, which provides 2-, 4-, and 8-digit codes. However, this year applicants may use the coding scheme currently in use for normal operational purposes and provide (preferably in electronic form on the inmate data diskette submitted to BJA) a data dictionary that identifies the offenses covered by the codes.

Only one of the two qualifying misdemeanors required under the law will need to be coded. BJA is not requiring applicants to establish a hierarchy among offenses nor is it placing any time limit within which such offenses must have occurred. Any qualifying conviction about which the applicant has information can be used, although the applicant should record the most serious offense for which it has conviction information. Thus, applicants who have limited information may rely on the "controlling" offense that resulted in the incarceration (if sentencing has already occurred) or on any known prior qualifying conviction or on a qualifying conviction that occurs during the reporting period.

- *FBI number.* Although not required, this information that will increase the probability of a positive match between applicant and existing INS records.

*In addition, each applicant will be preassigned a jurisdictional identification number that must appear on the diskette label and as part of every record submitted. This number must also appear on the formal application*



document. BJA will preprint this number on the labels and form, and it will be preentered into the BJA-provided inmate diskette. However, applicants converting their data directly into ASCII on their own diskette must ensure that their unique jurisdictional number is entered as part of each record submitted.

#### D. Verification of Inmate Data

*INS will verify applicants' inmate records by matching those records to records in INS databases.* The matching process will result in three groups of inmates: Positively identified reimbursable inmates, positively identified nonreimbursable inmates, and inmates not matched.

*A reimbursement rate will be applied to inmates whose eligibility cannot be determined through a positive match.* Unlike in prior years, this rate will not be based on the ratio of matched reimbursable to nonreimbursable inmates whose records are submitted by the applicant, but rather is based on a separate process. A study by INS of how likely it would be that INS databases did not have information on alien inmates who were nonreimbursable used the results of interviews of inmates that were conducted by INS field agents over a period of time. The study indicated that approximately 95 percent of those interviewed who had no previous record in any INS database were determined to be undocumented aliens. Thus, this year applicants will be given credit for 95 percent of the unmatched inmates with valid foreign countries of birth. This new procedure will lead to more uniformity among applicant submissions and thus be more equitable to all applicants.

Applicants who have a reasonable basis to believe that an inmate has falsely claimed to have been born in the United States or its territories and possessions (e.g., Guam, Northern Mariana Islands, the Virgin Islands, or Puerto Rico) may include those inmates in their data submissions. Similarly, applicants may include in their submissions inmates for whom they have no known country of birth. If INS is able to match these inmate records, they will be retained as part of the applicants' submissions. However, if INS is unable to match inmates for whom no foreign country of birth is provided, those records will be deleted from the applicants' submissions.

#### E. Cost of Inmate Custody

*Only routine operating expenditures will be allowed as part of the calculation of annual inmate costs; capital expenditures and nonroutine*

*costs will not be allowed.* Cost calculations should be based on routinely maintained cost figures for all facilities administered by the political subdivision submitting an application, not on costs directly associated with alien inmates claimed. The costs should be calculated based on the average number of bed spaces filled in all facilities under the applicant's control over the course of the year, not on an average of the costs of running each separate component facility.

*In making calculations, all payments, including Federal payments, to the applicant from other jurisdictions to cover costs of housing inmates for those jurisdictions must be deducted from the inmates' overall upkeep costs.* Payments made by the applicant to other jurisdictions to house their inmates can be added to the cost figures. Similarly, services provided within facilities but not charged to the budget of the correctional agency (e.g., vocational training funded through the State's department of education) should not be included. Nor should applicants use inmate cost rates negotiated with Federal or State or other jurisdictions as their basis of claim. Rather, calculations should be based on their own actual costs of inmate custody for the current or the immediately prior fiscal year.

Local facilities that receive State funds that supplement their overall budget, as opposed to funds for housing of specific inmates, should include that State amount in the overall calculation of their routine operating cost. After award, these localities will be expected to share their reimbursement with the State in the same proportion as that State assistance contributes to the local facility's incarceration expenses.

BJA will review and compare inmate cost figures submitted. If requested to do so by BJA, the Department of Justice, or any other authorized auditor, applicants must be able to provide the detailed information that went into their claimed costs calculation. However, this underlying documentation should *not* be submitted as part of the application.

#### F. Formal Application and Deadline for Application

Application kits will be mailed directly to correctional facilities (unless BJA has been notified by an eligible jurisdiction to provide the kit to another office) by June 30, 1997. The kit will contain:

- This final guidance as well as more detailed instructions for completing all application materials, including inmate data submissions.
- A one-page application form as well as a diskette containing the same data

fields to allow electronic submission of the form. The hardcopy application form will be scannable, so only the original can be returned to BJA. If the applicant chooses to enter the data into the diskette provided, the hardcopy form should not be returned. In addition to the basic information on the applicant (e.g., address, contact person, etc.), the application form will ask for information about the CEO of the jurisdiction and the form the delegation will take; the count method used, the inmate diskette option chosen, and number of inmates for which a claim is being made; and, the annual cost per inmate claimed. The authorized signing official for the applicant will, by his or her signature, make all necessary standard Federal assurance and certifications. If the application diskette is used, the electronic entry of the signatory's name constitutes the necessary certifications.

- A diskette preprogrammed to allow direct entry of inmate data on alien inmates counted in the proscribed format. The kit will also contain a diskette label to be put on the applicant's own diskette if the applicant chooses to directly convert its inmate data into the ASCII format.

- Mailing envelopes, one for the submission of diskettes and one for any hardcopy documents to be submitted, including the scannable application form, data dictionaries, or the delegation from the CEO of the jurisdiction, if the applicant is not the CEO. However, this delegation may be mailed separately to BJA.

*The deadline for submission of the inmate data and all other application documents (other than the delegation) will be August 30, 1997. This date is a firm deadline (evidenced by postmark); no extensions will be given and late submissions of inmate diskettes will not be allowed.* This deadline gives applicants approximately 60 days to complete the required application. During the application period, BJA staff will be available to answer any questions that applicants may have about filling in the formal application. Data specialists familiar with the electronic submissions requested or allowed as options will also be available. After an applicant has met the deadline, BJA reserves the right to ask for additional information to clarify or correct minor errors in the application. Any delegation required must be submitted by September 30, 1997.

#### G. Award Calculation and Funding Availability

*The FY 1997 amount available for distribution is approximately*



\$492,500,000. As in past years, the formula for award calculation will establish the final dollar claim of each applicant, based on the verification of its inmate and cost data. This calculation will involve multiplying the number of reimbursable inmates (including a percentage of inmates not matched) by the lengths of stay for these inmates by the applicant's actual annual cost per day per inmate. The final claims for all applicants will then be totaled and divided into the available appropriation to determine the percentage payoff on the dollar of each claim. Finally, the award amount for each applicant will be calculated based on that payoff percentage.

Applicants cannot be assured of receiving an award, however, because it is possible that, following INS verification of inmate data, there will be no reimbursable inmates upon which to base an award. Similarly, past reimbursements should not be used to predict future reimbursements because the number of applicants may vary and the eligibility criteria have changed in each of the three years of this program's operation.

*The CEO's of all eligible jurisdictions should note that payments can only be made to the applicant named in the application.* Therefore, jurisdictions that want awarded SCAAP funds to be deposited into an existing governmental bank account or Letter of Credit (LOCES) account rather than into the correctional agency's account should have the CEO or a designated governmental officer (e.g., county manager or chief financial officer) sign the application and use their place of business as the official applicant name and address.

#### H. Award and Post-Award Processing

*BJA will continue to utilize grants as its reimbursement mechanism.* The conditions governing general award eligibility, drawdown, use of funds after drawdown, and the processes used for these events will remain the same as in the past year. In particular, *all payments to applicants will be made electronically.* New applicants will be expected to provide information to allow electronic transfer of funds as part of their award acceptance. Grant closeout will be automatic. Award funds, once properly distributed to eligible applicants, may be used by these jurisdictions for any lawful purposes and need not be applied towards reimbursement of correctional costs.

Dated: June 24, 1997.

**Nancy E. Gist,**

*Director, Bureau of Justice Assistance.*

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BILLING CODE 4410-18-P

## DEPARTMENT OF LABOR

### Employment Standards Administration

#### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning two proposed extension collections: (1) OFCCP Recordkeeping/Reporting: Construction and (2) OWCP Health Insurance Claim Form.

A copy of the proposed information collection requests can be obtained by contacting the representatives in the office listed below in the ADDRESSEE section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before August 28, 1997. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**ADDRESSES:** Contact Mr. Rich Elman, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S-3201, Washington, D.C. 20210, telephone (202) 219-6375 regarding OFCCP recordkeeping and/Reporting. Contact Ms. Margaret Sherrill at the above address regarding OWCP Health Insurance Claim Form at the above address, telephone (202) 219-7601. (These are not toll-free numbers.) Fax (202) 219-6592.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Office of Federal Contract Compliance Programs enforces E.O. 11246, which prohibits employment discrimination because of race, color, religion, sex, or national origin, and requires affirmative action to ensure that persons are treated without regard to these prohibited factors. The Order applies to Federal contractors who have contracts exceeding \$10,000. In addition, OFCCP enforces Section 503 of the Rehabilitation Act of 1973 which applies to Federal contractors and subcontractors with a contract exceeding \$10,000, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, which applies to Federal contractors and subcontractors with a contract of \$10,000 or more.

##### II. Current Actions

The Department of Labor seeks extension of approval to collection this information to insure that Federal and Federally assisted construction contractors and subcontractors are in compliance with nondiscrimination and affirmative action contractual obligations.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* OFCCP Recordkeeping/Reporting Construction.

*OMB Number:* 1215-0163.

*Affected Public:* Business or other for-profit institutions.

*Total Respondents:* 100,000.

*Total Reporting Responses:* 103,675.