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June 13, 2023

The Honorable Mitch McConnell  
Minority Leader  
United States Senate

The Honorable Mike Braun  
United States Senate

The Honorable Ted Cruz  
United States Senate

The Honorable Bill Hagerty  
United States Senate

### **BAIL: Information on Whether DOJ Grants Were Used to Fund Cash Bond**

In U.S. courts, judges generally determine whether defendants charged with a crime should be detained or released. Bail is the process of release and requires a contract between an individual and the court—otherwise known as a bond. Bonds can be financial, such as a cash bond, or non-financial, such as the promise to appear in court.

The mission of the Department of Justice (DOJ), in part, is to keep the U.S. safe and to protect civil rights. DOJ awards federal assistance to state and local governments, for-profit and nonprofit organizations, tribal governments, and educational institutions through its many grant programs. Authorizing statutes and annual appropriations establish and fund these programs. DOJ has three grant-making components: the Office of Justice Programs (OJP), the Office on Violence Against Women (OVW), and the Office of Community Oriented Policing Services (COPS Office). These components are responsible for managing and administering the grants they provide to ensure that the recipients implement them consistent with applicable authorizing and appropriations statutes, pertinent regulatory requirements, and the grants' terms and conditions. For example, these components manage and administer grants by requiring recipients to submit quarterly financial reports and semiannual performance reports, and using these reports to monitor activities paid for with the grant funds.<sup>1</sup>

You asked us to review issues related to nonprofits using federal grant funds to pay cash bond for bail on behalf of individuals. This report discusses the extent to which (1) DOJ grant funds have been awarded to nonprofits and used to pay cash bond for bail, and (2) prohibitions exist in statute or regulation to prevent such use.

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<sup>1</sup>DOJ grant recipients may also subaward funding to subrecipients. These subrecipients are required to report information to the recipient of a DOJ grant, and the recipient is responsible for monitoring that its subrecipients comply with statutory or regulatory requirements and the terms and conditions of the subaward. 2 C.F.R. § 200.332.

To identify whether any DOJ grant funds have been awarded to nonprofits and used to pay cash bond for bail, we collected and analyzed grant award data from three DOJ grant systems, including the Grants Management System, JustGrants, and the Performance Measurement Tool.<sup>2</sup> The data were from fiscal years 2017 through June 2022 (the date of the most recent complete data available at the time of our searches). For each search result, we analyzed the award data to determine whether grant funds were awarded to a nonprofit and may have been used to pay cash bond for bail. We assessed the availability and reliability of the DOJ data by interviewing DOJ officials familiar with these systems, reviewing available data dictionaries, and reviewing publicly available data on USAspending.gov.<sup>3</sup> We determined that the DOJ data were sufficiently reliable for purposes of identifying grants with relevant award descriptions. To identify whether there was additional information on DOJ grants awarded or subawarded to nonprofits that did not appear in the DOJ data, we conducted additional searches in USAspending.gov from fiscal years 2017 through 2022 and reviewed the intended uses of these awards and subawards. We assessed the availability and reliability of the data by reviewing the Department of the Treasury's documentation regarding the series of validation requirements that all data must meet before it is published to the website.<sup>4</sup> We determined that the data were sufficiently reliable for purposes of identifying grants with relevant award descriptions. We also interviewed and collected information from DOJ officials, including those from OJP, OVW, and the COPS Office about their knowledge and experience with administering grant funding, including whether any grant funding has been used to pay cash bond for bail. Lastly, we met with selected nonprofits to assess whether they used DOJ grant funding to pay cash bond for bail.

To identify whether express prohibitions exist in statute or regulation to prevent the use of DOJ grant funds to pay cash bond for bail, we searched pertinent provisions of the U.S. Code, authorization and reauthorization acts, appropriations acts, and regulations. These provisions provide the authorized purposes and appropriations for key DOJ grant programs.

For more information about our scope and methodology, see Enclosure I.

We conducted this performance audit from May 2022 to June 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the

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<sup>2</sup>The Grants Management System is the legacy system used by OJP and OVW to track and manage awards throughout the grant life cycle. The COPS Office also searched its legacy system, NexGen, but that search did not return any results. In October 2020, OJP, OVW, and the COPS Office began using a new grants management system called JustGrants. Additionally, OJP grantees self-report information on performance measures for their awards using OJP's online Performance Measurement Tool system.

<sup>3</sup>USAspending.gov is the official data source of federal spending information. USAspending.gov has an award reporting threshold of \$25,000. See Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282, § 2(a)(2), (b)(1), 120 Stat. 1186, 1186-87 (31 U.S.C. § 6101 note). Recipients that make subawards are generally required to report information about subawards to the Federal Funding Accountability and Transparency Act Subaward Reporting System, which is also made publicly available on USAspending.gov. Our prior work has identified limitations in the subaward data reported in USAspending.gov. For example, subaward data may be incomplete because federal rules do not require award recipients to report information for all subawards. As of November 12, 2020, the Office of Management and Budget established a subaward reporting threshold of \$30,000. Information on subawards that fall below this threshold is not required to be reported in government-wide systems. Prior to November 12, 2020, that reporting threshold was \$25,000. See Guidance for Grants and Agreements, 85 Fed. Reg. 49,506, 49,517 (Aug. 13, 2020) (explaining increase in reporting threshold from \$25,000 to \$30,000). We only reviewed relevant award and subaward information that was made publicly available on USAspending.gov. We are currently examining the state of federal government-wide subaward data as part of a separate review.

<sup>4</sup>USAspending Data Sources, <https://www.usaspending.gov/data-sources> (Accessed April 25, 2023).

audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### **Available Information Does Not Indicate DOJ Grants Were Awarded to Nonprofits to Pay Cash Bond for Bail**

Based on our review of available data and interviews with DOJ officials, we found no information to indicate DOJ awarded grants to nonprofits to pay cash bond for bail or that nonprofit recipients used DOJ grant funds for this purpose. We collected and reviewed data from three relevant DOJ grants management systems and searched publicly available data on USAspending.gov about DOJ awards and subawards, and found no indication that any nonprofits used DOJ grant funds to pay cash bond for bail. DOJ officials also told us that DOJ has not awarded any grants intended specifically to pay cash bond for bail, and they are not aware of any recipients or subrecipients utilizing funds for this purpose. In addition to meeting with DOJ, we met with representatives from three nonprofits that have or support projects that pay cash bond for bail that received DOJ grants or subgrants during fiscal years 2017 through 2022. Officials from all three nonprofits told us that they did not use DOJ funds to pay cash bond for bail and described how they separate their grant and program funds from funds they use to pay cash bond for bail.

### **No Express Prohibitions Exist to Prevent the Use of DOJ Grant Funds to Pay Cash Bond for Bail**

We did not identify any express prohibitions in federal statutes or regulations on the use of DOJ grants to pay cash bond for bail on behalf of an individual. DOJ officials also confirmed that they are not aware of any such restrictions. While there may be no express prohibitions in federal statutes or regulations on using DOJ grant funds for this purpose, recipients of DOJ grants must use grant funds for the purposes for which DOJ awarded the grant.<sup>5</sup> Additionally, under the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, the direct costs of a DOJ grant must be allowable.<sup>6</sup> As such, recipients of DOJ grants may not use grant funds to pay cash bond for bail unless it falls within the scope of a DOJ grant program and is an allowable use of funds under that program, regardless of whether express prohibitions exist to prevent such use.

Officials at two of three grant-making components, COPS Office and OVW, noted that awarding grant funds to pay cash bond for bail is not within the scope of any of their grant programs. Specifically, COPS Office officials told us that its grant funding must be used in compliance with the COPS Office's applicable statutory language or in conjunction with enacted appropriations language. Thus, according to these officials, COPS Office grant funds must be used to enhance public safety through the implementation of community policing strategies or for evidence-based school safety programs and technology in and around elementary and secondary schools.<sup>7</sup>

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<sup>5</sup>See GAO, *Principles of Federal Appropriations Law*, 3d ed., vol. II, ch. 10, §§ C.2.a (citing 31 U.S.C. § 1301(a)), G.1.a, [GAO-06-382SP](#) (Washington, D.C.: Feb. 2006). (“[G]rant funds may be obligated and expended only for authorized grant purposes.”).

<sup>6</sup>To be allowable, direct costs must satisfy several requirements, including that they be necessary and reasonable for the performance of the federal award and be allocable to the federal award. 2 C.F.R. § 200.402, .403(a); *id.* § 2800.101, as adopted and supplemented by DOJ.

<sup>7</sup>See 34 U.S.C. §§ 10381–89 and *id.* §§ 10551–56.

Additionally, OVW officials told us that use of its grant funding to provide assistance to victims must fit within the Violence Against Women Act's definition of "victim services," which includes providing emergency and transitional shelter and crisis intervention, among other things.<sup>8</sup>

According to officials from DOJ's third grant-making component, OJP, it is unlikely that costs related to paying cash bond for bail would fit within the scope of any of its current grant programs, with the exception of the Edward Byrne Memorial Justice Assistance Grant (JAG) program.<sup>9</sup> These officials further stated that paying cash bond for bail on behalf of individuals may be an allowable use of grant funds under the JAG program. Nevertheless, OJP officials told us that they would have to evaluate any proposal to use JAG program funds to pay cash bond for bail against applicable federal requirements. All DOJ grant recipients and subrecipients, including those receiving funds from the JAG program, are responsible for meeting all federal requirements of the federal grants they receive.

Under the statute authorizing the JAG program, JAG award funds are to be used to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice or civil proceedings.<sup>10</sup> Further, according to OJP's December 2022 *Edward Byrne Memorial Justice Assistance Grant (JAG) Program Frequently Asked Questions (FAQs)*, JAG award funds can be used for, among other things, the activities of pretrial service agencies and pretrial release agencies, and for indigent defense.<sup>11</sup> As such, payment of cash bond for bail may potentially fit within the scope of the JAG program and be an allowable use of funds for that program.

Additionally, according to OJP documentation and OJP officials, a nonprofit can receive a subaward from a JAG program recipient if the primary purpose of the subaward meets the requirements of one or more JAG program areas under that program's authorizing statute.<sup>12</sup> For example, a nonprofit, in partnership with a local law enforcement agency, could receive a JAG subaward to provide allowable services to designated units of local government. Finally, the authorizing statute for the JAG program prohibits several uses of JAG funds, such as providing funds for security enhancements or equipment to any nongovernmental entity that is not engaged in criminal justice or public safety.<sup>13</sup> However, the statute makes no mention of or prohibition against funding cash bond for bail.

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<sup>8</sup>*Id.* § 12291(a)(51).

<sup>9</sup>The JAG program is the primary provider of federal criminal justice funding to states and units of local government.

<sup>10</sup>34 U.S.C. § 10152(a)(1). JAG award funds may also be used for any purpose for which a grant was authorized to be used under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs and the Local Government Law Enforcement Block Grants Program. Office of Justice Programs, *Purposes for Which Funds Awarded Under the Edward Byrne Memorial Justice Assistance Grants (JAG) Program May Be Used 2 n.3* (Washington, D.C.: June 2021).

<sup>11</sup>Office of Justice Programs, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program Frequently Asked Questions (FAQs)* (Washington, D.C.: Dec. 2022): 13.

<sup>12</sup>Office of Justice Programs, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program Frequently Asked Questions (FAQs)* (Washington, D.C.: Dec. 2022) (citing 34 U.S.C. § 10152(b)): 6.

<sup>13</sup>34 U.S.C. § 10152(d)(1).

## Agency Comments

We provided a draft of this report to DOJ for review and comment. DOJ told us that it did not have any comments on the draft report and did not provide any written technical comments.

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We are sending copies of this report to the appropriate congressional committees, the Attorney General, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact Gretta L. Goodwin at (202) 512-8777 or [GoodwinG@gao.gov](mailto:GoodwinG@gao.gov). Contact points for our Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in Enclosure II.



Gretta L. Goodwin  
Director  
Homeland Security & Justice

Enclosures – 2

## Enclosure I: Objectives, Scope, and Methodology

This report discusses the extent to which (1) DOJ grant funds have been awarded to nonprofits and used to pay cash bond for bail, and (2) prohibitions exist in statute or regulation to prevent such use.

To identify whether any DOJ grant funds have been awarded to nonprofits and used to pay cash bond for bail, we collected and analyzed grant award data from three DOJ grant systems, including the Grants Management System, JustGrants, and the Performance Measurement Tool.<sup>14</sup> We requested key word searches of the terms “bail,” “bail services,” “pretrial,” “indigent defense,” and “release agencies” for all open and closed grants from fiscal year 2017 through June 2022 (the date of the most recent complete data available at the time of our searches).<sup>15</sup> For each search result, we analyzed the award data to determine whether DOJ awarded grant funds to a nonprofit and may have been used to pay cash bond for bail. We then searched for relevant awards on USAspending.gov to obtain additional information about sub-recipients and the intended uses of subawards, if applicable.<sup>16</sup> For each subaward, we analyzed the subaward description to determine whether the subrecipient was a nonprofit and may have used grant funds to pay cash bond for bail.

We assessed the availability and reliability of the DOJ data by interviewing DOJ officials familiar with these systems, reviewing available data dictionaries for these systems, and reviewing publicly available data on USAspending.gov. We determined that the DOJ data were sufficiently reliable for purposes of identifying grants with relevant award descriptions.

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<sup>14</sup>The Grants Management System is the legacy system used by DOJ’s Office of Justice Programs (OJP) and Office on Violence Against Women (OVW) to track and manage awards throughout the grant life cycle. The Office of Community Oriented Policing Services (COPS Office) also searched its legacy system, NexGen, but that search did not return any results. In October 2020, OJP, OVW, and the COPS Office began using a new grants management system called JustGrants. Additionally, OJP grantees self-report information on performance measures for their awards using OJP’s online Performance Measurement Tool system.

<sup>15</sup>We selected these key search terms based on their potential relevance to payment of cash bond for bail. Additionally, the statute authorizing OJP’s Byrne Memorial Justice Assistance Grant (JAG) program states these funds are to be used “to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice or civil proceedings...” 34 U.S.C. § 10152(a)(1). OJP applies the definition of “criminal justice” in 34 U.S.C. § 10251(a)(1) to the JAG program, which permits JAG award funds to be used for the activities of pretrial service and release agencies. Office of Justice Programs, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program Frequently Asked Questions (FAQs)* 13 (Washington, D.C.: Dec. 2022). According to OJP, JAG award funds can also be used for prosecution and court programs, which includes indigent defense. *Id.* at 22–25; see also 34 U.S.C. § 10152(a)(1)(B). According to OJP officials, using grant funds to pay cash bond for bail on behalf of individuals would be an allowable use of JAG grant funding if otherwise meeting the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. 2 C.F.R. pt. 200.

<sup>16</sup>USAspending.gov is the official data source of federal spending information. USAspending.gov has an award reporting threshold of \$25,000. See Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282, § 2(a)(2), (b)(1), 120 Stat. 1186, 1186-87 (31 U.S.C. § 6101 note). Our prior work has identified limitations in the subaward data reported in USAspending.gov. For example, subaward data may be incomplete because federal rules do not require award recipients to report information for all subawards. As of November 12, 2020, the Office of Management and Budget established a subaward public reporting threshold of \$30,000. Information on subawards that fall below this threshold is not required to be reported in government-wide systems. Prior to November 12, 2020, that public reporting threshold was \$25,000. USAspending.gov includes reported subaward information. We only reviewed relevant award and subaward information that was made publicly available on USAspending.gov. We are currently examining the state of federal government-wide subaward data as part of a separate review.

To identify whether there was additional information on DOJ grants awarded to nonprofits that did not appear in the DOJ data, we conducted key word searches in USAspending.gov of the terms “bail,” “bail services,” “pretrial,” “indigent defense,” and “release agencies” for all open and closed grants from fiscal years 2017 through 2022 (the date of the most recent data available at the time of our search).<sup>17</sup> For each result, we analyzed the award data to determine whether DOJ awarded grant funds to a nonprofit and may have been used to pay cash bond for bail. We also reviewed information about subrecipients and the intended uses of subawards, if applicable. We assessed the availability and reliability of the data by reviewing the Department of the Treasury’s documentation regarding the series of validation requirements that all data must meet before it is published to the website. These requirements are described on the USAspending.gov website.<sup>18</sup> We determined that the data were sufficiently reliable for purposes of identifying grants with relevant award descriptions.

Additionally, we interviewed and collected information from DOJ officials, including those from DOJ’s Office of Justice Programs (OJP), Office on Violence Against Women (OVW), and the Office of Community Oriented Policing Services (COPS Office) about their knowledge and experience with administering grant funding, including whether any grant funding could be or has been used to pay cash bond for bail.

Lastly, we interviewed representatives from three nonprofits that have or support projects that pay cash bond for bail. To select the nonprofits, we identified a list of nearly 100 nonprofits that pay cash bond for bail through internet searches and a list from the National Bail Fund Network.<sup>19</sup> We searched for each of these nonprofits on USAspending.gov and identified three nonprofits that received DOJ grants or subgrants during fiscal years 2017 through 2022.<sup>20</sup>

During our interviews, we asked representatives from all three nonprofits to discuss how they used or planned to use the grant funds DOJ awarded them. We also learned about each nonprofit’s accounting practices to manage grant and program funds.<sup>21</sup> In addition, two of the three nonprofits told us they use separate bank accounts for collecting and distributing funds to pay cash bond for bail. One nonprofit—Community Partners—told us that it uses distinct accounting codes for all of the projects that it fiscally sponsors. We selected the two grants DOJ awarded to Community Partners during our timeframe for further review. We collected and reviewed all award documentation from DOJ’s grant files and all expenditure documentation

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<sup>17</sup>We selected these key search terms to be consistent with the searches DOJ conducted in its grants management systems.

<sup>18</sup>USAspending Data Sources, <https://www.usaspending.gov/data-sources> (Accessed Apr. 25, 2023).

<sup>19</sup>The National Bail Fund Network is a national project that works with organizers, advocates, and legal providers across the country that are using, or contemplating using, community bail funds. The Network was established in September 2016 and is made up of over 90 community bail funds. <https://www.communityjusticeexchange.org/en/national-bail-fund-network> (Accessed Apr. 5, 2022).

<sup>20</sup>These nonprofits included Colectiva Legal del Pueblo, Community Partners, and Operation Restoration. According to officials, Colectiva Legal del Pueblo was the fiscal sponsor of the Washington Immigrant Solidarity Network, which operates the Fair Fight Immigration Bond Fund, from November 2016 through December 2022. Community Partners is the current fiscal sponsor of the Long Beach Immigrant Rights Coalition, which operates the Long Beach Liberation Fund. Operation Restoration operates the Safety and Freedom Fund. A fiscal sponsor is a nonprofit organization that provides oversight, financial management, and other administrative services for charitable projects.

<sup>21</sup>We did not evaluate these accounting practices.

from Community Partners for these awards for any indications that Community Partners may have used grant funds to pay cash bond for bail.

To identify whether express prohibitions exist in statute or regulation to prevent the use of DOJ grant funds to pay cash bond for bail, we searched pertinent provisions of the U.S. Code, authorization and reauthorization acts, appropriations acts, and regulations. These provisions provide the authorized purposes and appropriations for key DOJ grant programs. We also reviewed relevant DOJ policies and procedures for administering its grant programs, specified in documents such as its grant solicitations and DOJ Grants Financial Guide.<sup>22</sup> In addition, we interviewed DOJ officials to obtain their understanding of whether any current restrictions exist on using DOJ grant funds to pay cash bond for bail, and whether using DOJ grant funds in that way is allowable under any of its grant programs.

We conducted this performance audit from May 2022 to June 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>22</sup>Department of Justice, *DOJ Grants Financial Guide* (Washington, D.C.: Nov. 2022).



## **Enclosure II: GAO Contact and Staff Acknowledgments**

### **GAO Contact**

Gretta L. Goodwin, (202) 512-8777 or [GoodwinG@gao.gov](mailto:GoodwinG@gao.gov)

### **Staff Acknowledgments**

In addition to the contact named above, Joseph P. Cruz (Assistant Director), Stephanie Heiken (Analyst-in-Charge), Amanda Miller, Jan Montgomery, Bryan Ricciardi, Janet Temko-Blinder, Adam Vogt, and Christopher Zubowicz made key contributions to this report.

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