



Office of the Attorney General
Washington, D. C. 20530

August 12, 2013

MEMORANDUM TO HEADS OF DEPARTMENT OF JUSTICE COMPONENTS
AND UNITED STATES ATTORNEYS

FROM:

THE ATTORNEY GENERAL

SUBJECT:

Consideration of Collateral Consequences in Rulemaking

This Administration has made it a priority to promote effective policies to aid former prisoners in reentering society. Lack of or ineffective reentry policies impose high social and economic costs, including increased crime, increased victimization, increased family distress, and increased pressure on already-strained federal, state and municipal budgets. By assisting individuals being released from prisons and jails to become productive citizens, we can protect public safety and save taxpayer dollars by lowering the direct and collateral costs of incarceration. In January 2011, I established the Federal Interagency Reentry Council (Reentry Council) which includes 20 federal agencies that span the Administration. A chief goal of the Reentry Council is to remove barriers to successful reentry, so that individuals who have served their time and paid their debt to society are able to compete for a job, attain stable housing, support their children and their families and contribute to their communities.

Multiple Department components have played a significant role in advancing this goal. To mention a few, the Department's Office of Justice Programs leads the Reentry Council's Staff-Level Working Group, oversees the Second Chance Act grants, and has funded a comprehensive national study by the American Bar Association's Criminal Justice Section on the collateral consequences of criminal convictions. The Civil Rights Division leads the Collateral Consequences Working Group of the Reentry Council. The Access to Justice Initiative has worked with federal grant-making agencies to emphasize the importance of connecting the reentering population with legal services necessary to surmount barriers to reentry. The Office of Community Oriented Policing Services has published tools for law enforcement aimed at enhancing public safety by improving reentry outcomes. The Executive Office for United States Attorneys has identified tools and resources for United States Attorneys to provide leadership in advancing reentry activities. U.S. Attorney's Offices are involved in reentry programs, such as reentry courts, ex-offender call-in programs and reentry outreach events with potential employers for ex-offenders, across the country. And the Bureau of Prisons works to improve reentry outcomes for federal prisoners through a variety of treatment programs and services.

But there is more work to be done. With the support of this Department, the American Bar Association is creating an online catalog of what is likely to be 40,000 federal and state statutes and regulations that impose collateral consequences on people convicted of crimes. Collateral consequence statutes and policies impose additional barriers on people who have served their sentences, including denial of employment and housing opportunities, without

increasing public safety in essential ways. Some of those restrictions serve meaningful public safety goals. However, others can be more narrowly tailored. Research reveals that gainful employment and stable housing are key factors that enable people with criminal convictions to avoid future arrests and incarceration.

Over the past two and a half years, I have reached out to the leadership of other federal agencies and to state attorneys general, urging them to evaluate the collateral consequences imposed by laws, regulations and policies under their supervision. I urged them to tailor laws and policies to address genuine public safety risks while reducing or eliminating those that impede successful reentry without significant community benefit. For example, one consideration could be time limits on certain collateral consequences imposed by statutes so that formerly incarcerated individuals are not subjected to lifelong penalties after they have completed their term of incarceration. Other Reentry Council agencies have proposed regulatory changes and some states answered this call with proposed regulatory and legislative changes. In this Department, we reviewed regulations creating collateral consequences of criminal convictions and clarified policy to help eliminate unnecessary barriers to reentry.

These efforts are first steps toward a broader goal of institutionalizing consideration of collateral consequences in future regulatory development. This Department can and should take the lead in this process. You should insure that, in proposing new and revising or updating existing regulations or policy guidance, your component considers whether the regulation or guidance could impose a barrier to successful reentry after a criminal conviction and/or incarceration. If so, your component also should consider whether the regulation or guidance can be more narrowly tailored, without impeding public safety or other legitimate government interests, to avoid imposing an unnecessary burden on individuals reentering society. Finally, the Office of Legal Policy (OLP), in its review of regulations proposed by a DOJ component, will look to see whether the collateral consequences the proposed regulation impose on the reentering population have been narrowly tailored to reasonably eliminate or mitigate such consequences without impeding public safety or other legitimate government interests. To further that review, a component submitting a regulation to OLP for Department clearance should expressly state that it has undertaken the collateral consequences analysis. Further guidance on implementing this review will follow this memorandum.