increase the grantee's force level above the number of funded (filled and vacant) sworn officers existing on October 1, 1994. The following additional indicators may be used by the Department of Justice to review applicants and monitor grants for the presence of supplanting: (a) when COPS-funded hires are

(a) when COPS-funded hires are excluded, the level of new officers hired or rehired, or projected to be hired or rehired, during the current local fiscal year is inconsistent with recent

historical practice;

(b) when COPS-funded hires are excluded, positive and timely steps have not been taken to offset funded vacancies existing on or after October 1, 1994 due to attrition; and/or

(c) any other indicia that suggest that the amount of non-federal resources devoted to the hiring or rehiring of law enforcement officers has decreased in expectation of or as the result of receipt of a COPS grant.

4.9.2.1 By way of example only, the following practices likely will be

regarded as supplanting:

- (a) A department with vacant funded positions at the start of the grant period or at any time thereafter hires no new officers other than COPS grant-funded hires.
- (b) No timely hiring, other than COPS-grant funded hiring, is done by a department to replace vacancies created by attrition existing at or after the beginning of a grant period.

(c) No hiring, other than COPS-grant funded hiring, is undertaken by a department that has increased its force

size in recent years.

(d) Grant funds are used to replace, or to allow the reallocation of, funds already committed in a local budget for law enforcement purposes.

4.9.3 Potential supplanting will be the subject of application review, as well as possible pre-award review, postaward monitoring, and audit.

- 4.9.4 If the use of the indicators in 4.9.2 suggests the potential presence of supplanting, the applicant or grantee will be required to supply documentation to the COPS Office demonstrating that the reduction in nonfederal resources occurred for reasons other than the receipt or expected receipt of federal funding. If the documentation does not establish a satisfactory justification, the Director may deny grant funding, suspend or terminate an approved grant, seek repayment of grant amounts already disbursed, and/or refer a grantee for civil or criminal enforcement.
- 4.9.5 An applicant seeking more definitive guidance concerning whether a particular use of COPS grant funds

- will be viewed as supplanting by the COPS Office may request an advisory letter. A request for an advisory letter should be directed in writing to the COPS Office of General Counsel. Such as request should set forth all of the relevant factual circumstances. An advisory letter will be sent to the requester within ten business days of receipt of a complete request. A grantee shall not be penalized by the COPS Office for good-faith reliance on an advisory letter received under this provision.
- 4.10 Each grant application also must be accompanied by assurances or certifications of compliance with legal requirements imposed by provisions of federal law other than the program requirements specifically imposed by the Act. The required assurances and certifications will be set forth in the application materials. These provisions include requirements that:

(a) grantees maintain a drug-free workplace (28 CFR Part 67);

(b) grant applicants not be currently debarred or suspended from participation in federal transactions (28 CFR Part 67)

(c) grant funds not be used for federal lobbying efforts (28 CFR Part 69),

- (d) grantees not discriminate or deny benefits or program participation on the grounds of race, color, religion, gender, national origin, age or disability, that grantees forward the COPS Office notice of certain findings of civil rights violations, and that recipients of grants of \$500,000 or more submit an Equal Employment Opportunity Plan (see 28 CFR Part 42, subparts C, D, E and G);
- (e) certain restrictions on political activities by grantee employees be observed (see 5 U.S.C. § 1501, et seq.);
- (f) facilities used in connection with the grant-funded project not be listed on the EPA's list of Violating Facilities;
- (g) grantees observe the minimum wage and maximum hour provisions of the Federal Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*), if they apply to the grantee;

(h) grantees establish safeguards against the use by employees of positions for private gain;

(i) grantees comply with Office of Management and Budget Circulars governing the audit of federally-funded programs: and

(j) grantees permit the Department of Justice and/or the Comptroller General access to records and documents

relating to the grant.

4.10.1 Copies of statutes and regulations relating to any of the matters on which assurances are sought are available on request from the COPS Office of General Counsel.

- 4.11 Each State and local governmental applicant is responsible for compliance with the intergovernmental review process set forth in Executive Order 12372. Under this process, if the COPS grant program has been selected for review by the State in which the grantee is located, the applicant must submit a copy of the application to the State Single Point of Contact, if one exists. A listing of State Single Points of Contact will be contained in each COPS grant application kit. Submission of a copy of the application to the State Single Point of Contact may be done at the same time as the original application is submitted to the COPS Office.
- 4.12 Grantees must comply with the fiscal and audit requirements established by the Single Audit Act and OMB Circular A–128.
- 5.12.1 A grantee must establish or maintain an accounting system with sufficient fiscal controls to ensure adequate accountability for the funds that it has been awarded. Detailed guidance on these matters is contained in Chapter 4 of the Office of Justice Programs' Financial and Administrative Guide for Grants, which is available from the COPS Office on request. The grantee must permit access by representatives of the Department of Justice and/or the Comptroller General of the United States for the purpose of audit and examination to any pertinent books, documents, papers, or records of a grant recipient, and to the pertinent books, documents, papers, or records of State and local governments, persons, businesses, and other entities that are involved in programs, projects, or activities for which assistance is provided.

Section 5 Provisions Applicable to COPS AHEAD

- 5.1 COPS AHEAD is open to States, units of local government, Indian tribal governments, multijurisdictional or regional consortia and other public entities employing career law enforcement officers and serving populations of 50,000 or more. "Population" is defined at 3.2.1.
- 5.1.1 Recipients of COPS Phase I grants (announced October 12, 1994 based upon applications submitted under the Police Hiring Supplement program) are eligible to receive additional funding under COPS AHEAD if the combined hiring under both programs does not exceed 3 percent of the actual October 1, 1994 force level.
- 5.2 COPE AHEAD permits interested agencies to begin recruiting, hiring and training new officers to participate in community oriented policing in