



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

January 13, 2012

Don Merritt, Acting Director
Montana Board of Crime Control
3075 N. Montana Ave.
P.O. Box 201408
Helena, MT 59620-1408

RE: Montana Board of Crime Control Compliance Review (09-OCR-0365)

Dear Mr. Merritt:

On June 18, 2007, the Office of Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) initiated a compliance review of all State Administering Agencies, including the Montana Board of Crime Control (MBCC), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the MBCC's compliance with applicable federal civil rights laws along with the MBCC's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the MBCC's implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 (Equal Treatment Regulations).

On November 18, 2009, the OCR conducted an onsite visit to the MBCC's offices in Helena, Montana, to interview MBCC administrators and to conduct a training program for MBCC administration and program staff on the federal civil rights laws that the OCR enforces. The OCR would like to thank MBCC staff, especially Lily Yamamoto, for assisting OCR attorney Debra Murphy during the onsite visit.

On May 11, 2011, the OCR issued a Draft Compliance Review Report, and provided you with thirty days within which to correct any factual inaccuracies. On June 29, 2011, you responded by largely agreeing to implement the OCR's recommendations and by providing additional information about the non-discrimination policies and complaint procedures that apply to MBCC employees. This Final Compliance Review Report incorporates that new information.

Based on the MBCC's responses to our data request and the information that the OCR gathered during our onsite visit, and in regard to the limited scope of our review, the OCR concludes that the MBCC has taken steps to substantially comply with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about whether the MBCC is accurately informing

subrecipients about the civil rights laws that the OCR enforces, has adequate complaint procedures in place to respond to discrimination complaints from beneficiaries and employees of subrecipients, and is sufficiently training and monitoring its subrecipients on applicable federal civil rights laws. The following Compliance Review Report includes recommendations for improving the MBCC's methods for monitoring the civil rights compliance of subrecipients, and ensuring that it meets its obligations under federal civil rights laws.

I. Overview

The OCR's records and the information provided by the MBCC indicate that the MBCC currently administers subgrant awards funded by the OJP's Bureau of Justice Assistance (BJA), Bureau of Justice Statistics (BJS), National Institute of Justice (NIJ), Office for Victims of Crime (OVC), Office of Juvenile Justice and Delinquency Prevention (OJJDP), as well as the Office on Violence Against Women (OVW). This section of the Compliance Review Report will examine the MBCC's procedures for monitoring whether subrecipients are meeting their obligations to comply with the federal civil rights laws that are a condition for receiving federal financial assistance, as well as the MBCC's implementation of the DOJ's Equal Treatment Regulations.

A. General Monitoring Procedures to Ensure Subrecipient Compliance with Applicable Federal Civil Rights Laws

Recipients of federal financial assistance from the OJP are responsible for certifying that contractors and subrecipients under DOJ grant programs comply with applicable federal civil rights laws. In reviewing the MBCC's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the MBCC used the following four tools: (1) standard assurances; (2) onsite visits and other monitoring methods; (3) training programs and technical assistance, and (4) procedures for receiving, investigating, and resolving complaints alleging discrimination in the delivery of services.

1. Standard Assurances

The MBCC represented that it uses three forms that address civil rights obligations in the award-making process: (1) Special Assurances and Conditions, (2) EEOP Certification Form, and (3) GMIS Special Conditions. The Special Assurances and Conditions form (Assurance Document) must be submitted with the application for funding, and contains two civil rights provisions. First, the Assurance Document contains the following statement:

Assurance of Compliance with Civil Rights Act of 1964: The applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964, as amended, and all requirements imposed by or pursuant to Regulations of the Department of Justice (28 CFR Part 42) issued pursuant to that title, to the end that no person shall on the ground of race, color, religion, national origin, sex, or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title.

This statement is an inaccurate summary of the civil rights statutes and regulations that apply to recipients of federal financial assistance. For a better and more complete statement of civil rights assurances, please see the Section II. B. of this Compliance Review Report. The second civil

rights provision in the Assurance Document states that if federal or state court or a federal or state administrative agency makes a finding of discrimination against the subrecipient on the basis of race, color, religion, national origin, sex, disability, or age, the subrecipient will forward that finding to the OCR.¹ Since applications are submitted online, and applicant will see the content of the Assurance Document on the screen and must click “I agree” in order to proceed with the application.

The second document which contains civil rights provisions is the EEOP Certification Form, which must be completed and submitted with the application. The MBCC uses the OCR’s EEOP Certification Form, and states that subrecipients must maintain an EEOP if (1) the recipient is a state or local government agency or any business; and (2) the recipient has 50 or more employees; and (3) the recipient receives a single award of \$25,000 or more. This form further states that a recipient that is required to maintain an EEOP must submit it to the OCR if it receives a single award of \$500,000 or more.

The third document that contains civil rights provisions is the GMIS Special Conditions Form, which a successful applicant must endorse before drawing down any funds. The Special Conditions Form contains 67 distinct provisions, 2 of which pertain to civil rights. First, the Special Conditions Form reiterates the requirement that subrecipients should report to the MBCC² any finding of discrimination based upon race, color, religion, national origin, sex, or disability³ that is made by a state or federal court or state or federal administrative body. Second, the Special Conditions Form contain a list four activities for which the subrecipient may not use federal funds, including:

- A) Religious worship, instruction, or proselytization.
- B) Equipment or supplies to be used for any of the activities specified in (A) above.
- C) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of the activities specified in (A).
- D) An activity of a school or department of divinity.

This is the only provision which refers to the content of the Equal Treatment Regulations. However, Section II.B of this Compliance Review Report provides a more complete way of notifying subrecipients of their obligations under the Equal Treatment Regulations.

2. Onsite Visits and Other Monitoring Methods

The MBCC reports that it uses quarterly reports, annual desk audits and periodic onsite visits to conduct fiscal and program monitoring once a grant is awarded. The quarterly reports are submitted electronically, and primarily gather information about the subrecipients’ recent expenditures, financial obligations, program activities, and obstacles. During the OCR’s onsite visit, the MBCC staff explained that the frequency of on-site monitoring visits varies from program to program, but the MBCC generally visits each subrecipient once every three years.

¹ Note that although recipients of federal financial assistance are prohibited from discriminating on the basis of disability and age, the OJP regulations do not require that subrecipients forward to the OCR findings of discrimination based on disability or age. *See* 28 C.F.R. § 42.204(c).

² Note that the Assurance Document states that subrecipients will forward findings of discrimination directly to the OCR, while the Special Conditions Form indicates that these findings are to be sent to the MBCC. The MBCC’s procedures should be consistent.

³ *See supra* note 1.

Prior to an on-site visit, the MBCC sends the subrecipients a copy of the monitoring form that it will use, so the subrecipient may gather the appropriate documentation to respond to the MBCC's queries. The MBCC provided the OCR with four sample Program Monitoring Forms, one for a nonprofit recipient under the Victims of Crime Act (VOCA), one for a public VOCA recipient, one for a recipient under the Violence Against Women Act (VAWA), and one for Juvenile Justice grant recipients. They all vary somewhat in the civil rights information that they solicit. Generally speaking, a given Program Monitoring Form would be used to guide both the annual desk audits, and the periodic onsite visits.

The Program Monitoring Forms for non-profits and public agencies that receive VOCA funding are identical in most respects. Both forms ask subrecipients if they have written client grievance policies, if any grievances have been filed in the past year, if they are "involved in any administrative or court proceedings regarding discrimination in hiring or employment ... or administration of the agency," and if the program advertises that it is an Equal Opportunity Employer. Additionally, the Program Monitoring Form for non-profits asks if the Board of Directors represents the diversity of the community. Additionally, both Program Monitoring Forms list a number of documents that the MBCC may ask to see during its site visit, including agency policies and procedures for services, employee/volunteer policy and procedures manual, and employee/volunteer training manual. The list does not specifically include non-discrimination policies or grievance procedures, although civil rights policies may be subsumed in an agency's policies regarding personnel matters and service delivery.

The Program Monitoring Form for the VAWA grants also contains several civil rights provisions. This form asks subrecipients how the program serves persons with language barriers,⁴ if the funds have been used to support services for men,⁵ and which areas of the subrecipients shelter facilities are accessible for persons with disabilities.⁶ This form contains a section entitled "Civil Rights Requirements," which includes the following questions:

1. During the last three years, has a federal or state court or state administrative agency issued a finding of discrimination against the program after a due process hearing on the grounds of race, color, national origin, age, sex, religion, or disability?⁷
2. Who is the person responsible for submitting any findings of discrimination to the Montana Board of Crime Control?⁸

Name:

Title:

Phone Number:

⁴ See *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41455 (June 18, 2002).

⁵ See 42 U.S.C.A. § 13925(b)(8). ("Nothing in this title shall be construed to prohibit male victims of domestic violence, dating violence, sexual assault, and stalking from receiving benefits and services under this title.")

⁶ A thorough examination of the accessibility requirements for shelters receiving Federal financial assistance is beyond the scope of this compliance review. However, recipients shall comply with Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and Section 504 of the Rehabilitation Act (29 U.S.C. § 794), as they related to discrimination on the basis of disability in OJP funded programs or activities, and their implementing regulations at 28 C.F.R. Pt. 35 and 28 C.F.R. § 42.501 et seq.

⁷ See *supra* note 1.

⁸ Note that this STOP Grant Monitoring Form indicates that these findings are to be sent to the MBCC, as does the Special Conditions Form. However, the Assurance Document states that they should be sent directly to the OCR. The MBCC's procedures should be consistent for all subrecipients. See *supra* note 2.

- Each agency that receives \$25,000 or more but under \$500,000 in Federal funds and has 50 or more employees, is required to maintain an EEOP on file and return a certification form to the MBCC.
- A recipients of under \$25,000 is not required to maintain or submit an EEOP

This PowerPoint slide does not contain the most accurate written explanation of the EEOP requirements, although the OCR is uncertain what the MBCC trainer might say during the training to supplement this slide. In any case, Section II.E. of this Compliance Review Report contains a complete description of the EEOP obligations, and recommendations for monitoring a subrecipient's compliance with the same.

The MBCC also reported to the OCR that it provides technical assistance to subrecipients as needed or requested, although it has yet to provide any technical assistance on civil rights. The MBCC staff told the OCR during our on-site visit that while no subrecipients have requested technical assistance on civil rights, the MBCC would require it if any of the monitoring methods described in Section I.A.2. of this Compliance Review Report revealed civil rights problems.

4. Complaint Procedures

In its Data Response, the MBCC referred the OCR to the Montana Department of Labor and Industry's Human Rights Bureau (HRB) as the agency to which employees of the MBCC or employees or beneficiaries of subrecipients could complain of discrimination. During the onsite portion of the OCR's review, the MBCC staff told the OCR that its own employees could also complain to the State Personnel Division of the Montana Department of Administration. Consequently, the OCR's Draft Compliance Review Report summarized only these policies and processes for addressing allegations of discrimination in employment and services. In response to the Draft Compliance Review Report, you provided additional information about the MBCC's relationship to the Montana Department of Justice (MDOJ), which you contend require that the MDOJ's non-discrimination policies and complaint procedures govern the MBCC. This Final Compliance Review Report reflects that additional information.

The Montana State Constitution requires all components of the Executive Branch to be consolidated into not more than twenty principal departments⁹, and Montana State law defines those twenty Departments to include the MDOJ.¹⁰ State law further provides that the MBCC shall be allocated to the MDOJ "for administrative purposes only,"¹¹ which guarantees that the MBCC shall "exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the [MDOJ] and without approval or control of the [MDOJ]."¹² In turn, the MDOJ shall retain several administrative functions on behalf of the MBCC, including "budgeting, recordkeeping, reporting, and related administrative and clerical functions."¹³ Further, the MDOJ has responsibility for printing and disseminating the MBCC's "required

⁹ "All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of the governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government." Mont. Const. art. VI, § 7.20

¹⁰ Mont. Code Ann. § 2-15-104 (1971).

¹¹ Id. § 2-15-2006.

¹² Id. § 2-15-121(1)(a).

¹³ Id. § 2-15-121(2)(a).

notices, rules, or orders adopted, amended, or repealed” by the MBCC.¹⁴ On its face, the “administrative purposes” retained by the MDOJ do not obviously include the development and enforcement of non-discrimination policies, nor do the “quasi-legislative” functions reserved for the MBCC obviously exclude the same.

However, as mentioned in the Draft Compliance Review Report, the Montana Department of Administration (another of the twenty constitutionally allowed and statutorily defined components of the Montana Executive Branch), has jurisdiction over the equal employment opportunity policies for state employees, and publishes all policies and procedures in the Nondiscrimination Equal Employment Opportunity Guide (EEO Guide). State Personnel Division Department of Administration, *State of Montana Nondiscrimination-Equal Employment Opportunity Guide*, (January 30, 2004) available at <http://hr.mt.gov/hrpp/guides.mcp.x>. The EEO Guide provides that, in addition to appointing an EEO officer and an ADA coordinator, “[e]ach *department* must also develop a written policy statement that includes at a minimum EEO, ADA, [sic] and the prohibition of sexual harassment provisions and a complaint resolution procedure for both internal and external dissemination.” *Id.* at 4. (emphasis added) Because “department” is further defined by state statute to indicate one of the twenty principal departments of the Executive Branch,¹⁵ it appears that it is the MDOJ that has the responsibility for developing the EEO policy mandated by the EEO Guide, and that the MBCC is governed by that policy.¹⁶

In conjunction with your response that the MBCC follows the MDOJ’s non-discrimination policies and procedures, you submitted to the OCR a document entitled *Montana Department of Justice EEO & Affirmative Action Plan* [MDOJ EEO Plan]. The MDOJ EEO Plan includes, among other things, two policy statements, complaint resolution procedures, and a dissemination statement.¹⁷ The first policy statement, the Equal Employment Opportunity Policy Statement, provides that “[i]t is the policy of the Montana Department of Justice to provide equal employment opportunity (EEO) to all persons regardless of race, color, religion, creed, sex, sexual orientation, national origin, age, mental or physical disability, marital status or political belief with the exception of special programs established by law.” The policy statement also addresses affirmative action to equalize employment opportunities, reasonable accommodations for persons with disabilities, and a prohibition on retaliation. A designated EEO official for the MDOJ is identified and complainants are directed to her for resolution of grievances. The second policy statement, the Sexual Harassment Policy Statement, specifically defines sexual harassment, including examples, and provides guidance on complaining about sexual harassment to one’s supervisor, the EEO officer or the Montana Human Rights Bureau (HRB).

The Complaint Resolution Procedure in the MDOJ EEO Plan restates the basic non-discrimination protections in employment, while adding the that “[t]he State also prohibits discrimination in providing services, activities and programs unless providing a reasonable accommodation or reasonable modification would cause an undue hardship.” It is further

¹⁴ *Id.* § 2-15-121(2)(e).

¹⁵ *Id.* § 2-15-102(4)(b).

¹⁶ Your June 29, 2011, submission includes an organizational chart of the MDOJ, which shows eight Divisions of the MDOJ. Although the MBCC is not one of them, you wrote that the MBCC will be listed in the most recent organizational chart awaiting the Attorney General’s signature.

¹⁷ The MDOJ EEO Plan also includes an affirmative action plan, which is outside the scope of this discussion.

clarified that this procedure is available to any “applicant, client, customer or employee,”¹⁸ with disability complaints going to the ADA Coordinator and all other complaints going to the EEO Officer. The Complaint Resolution Procedure delineates management’s responsibility upon receiving a report of alleged discrimination as follows: (1) to report the incident to the EEO Officer or ADA Coordinator; (2) to take appropriate steps to prevent the alleged conduct from continuing pending an investigation; (3) to initiate an investigation within 10 business days of receiving the complaint, which shall result in a factual report with a written course of action; (4) to inform the Complainant of the results of the investigation within five days of receiving the investigator’s factual report; (5) to notify all parties that no action will be taken if the investigation cannot establish sufficient evidence of discrimination, and to take appropriate action if the investigation establishes that discrimination occurred; this action may include disciplinary action including termination; and (6) to insure that neither management nor another employee retaliate against someone for opposing discrimination. Finally, the Complain Resolution Procedure states that an applicant, client, customer or employee may concurrently file a complaint with the Human Rights Bureau.

Lastly, the MDOJ EEO Plan includes a Policy Statement on the internal and external dissemination of the plan. Internal dissemination includes placing the plan in the departmental policy manual, publicizing it in the annual report and other publications, meeting with administrators and supervisors, including it in employee orientation and training, discussing it with union officials, and placing it where it can be physically viewed by employees. External dissemination includes filing the plan with the State Personal Division of the Department of Administration, including a statement of vacancy announcements, informing recruitment sources, and informing organizations for women, minority groups and people with disabilities. Although the Complain Resolution Procedures states the non-discrimination policies apply to services, and that clients and customers can avail themselves of those procedures, the Policy Statement on Dissemination contemplate an audience of employees and applicants for employment.

As has been mentioned several times, the Montana Human Rights Board is another resource for individuals who believe they have been the victims of discrimination. The Montana HRB has jurisdiction over complaints of discrimination in credit, education, employment, financing, housing, state and local government services and employment, insurance, and public accommodations on the basis of race, color, national origin, age, marital status, disability, religion, creed, sex (including pregnancy), political beliefs (government services and employment only), and familial status (housing only). According to information posted on the HRB web-site, a complainant must call the HRB, which will assign an investigator to interview the complainant to determine if the facts indicate that illegal discrimination has occurred. At that point, the investigator will draft a formal complaint, which must be signed by the complainant within 180 days of the alleged discrimination in order to be timely; there are no complaint forms available to the public. The HRB will then conduct an informal investigation and, if a preponderance of the evidence supports that discrimination occurred, the HRB will issue a finding of “reasonable cause.” At that point, the HRB will attempt to conciliate the dispute between the parties. If conciliation is not possible, the Montana Department of Labor and Industry will hold a public hearing, which will result in a final agency decision.

¹⁸ Although the Complaint Resolution Procedures mention “clients” and “customers”, everything else in the MDOJ EEO Plan appears to limit the scope of the plan to employment discrimination to the exclusion of services discrimination. As mention in Section II.A. of this report, the MBCC should clarify the scope of these policies.

B. Monitoring Compliance with Equal Treatment Regulations

The purpose of the Equal Treatment Regulations is to ensure that “[r]eligious organizations are eligible, on the same basis as any other organization, to participate in any [Justice] Department program for which they are otherwise eligible.” 28 C.F.R. § 38.1(a). The Regulations prohibit the DOJ and DOJ funding recipients from discriminating either for or against an organization on the basis of the organization’s religious character or affiliation. *Id.* In evaluating the MBCC’s equitable treatment of faith-based organizations, the Compliance Review focused on two issues: (1) the review process for making awards to applicant faith-based organizations, and (2) procedures for ensuring that funded faith-based organizations comply with applicable federal civil rights laws.

1. The Process for Making Awards to Applicant Faith-Based Organizations

As discussed in Section I of this Compliance Review Report, the MBCC administers numerous subgrants funded by the BJA, the BJS, the NIJ, the OJJDP, the OVC, and the OVW. During the OCR’s onsite visit, the MBCC staff said that to notify agencies about competitive funding opportunities, the MBCC posts Requests for Funding Proposals (RFPs) on its website, sends postcards to the previous applicants and current grantees, and issues press releases. Additionally, the MBCC sends electronic mail to interested agencies and individuals, which depending upon the grant, include non-profits, law enforcement agencies, courts, domestic violence and sexual assault coalitions, Indian Tribes, probation and parole offices, city and court clerks, and judges.

The MBCC utilizes an online application system, and applicants must agree to abide by the Assurance Document in order to successfully move through the electronic application process; an applicant cannot submit an incomplete application using this process. During the OCR’s onsite visit, the MBCC staff explained that it has a four step process for reviewing completed applications. First, the MBCC staff reviews the applicants’ compliance with the basic fiscal requirements of the grant. Second, the MBCC staff reviews whether applicants meet the minimum programming requirements of the grant. Up to this point, the MBCC staff is only evaluating the non-negotiable requirements of the grant, and not evaluating applicants relative to each other. During the third step of the review process, the MBCC program managers review applicants using a scoring rubric, and assign points to each applicant based on their strength in a particular area. Fourth, the applications and the completed scoring rubrics are uploaded to a password-protected website to be accessed by the Board’s various application review committees. Those committees then hold public meetings to discuss applications and funding levels. Anyone can attend these meetings, including applicants, but applicants cannot comment during discussion of their own grant area. Following these open meetings, the review committees make funding recommendations to the full Board, and notify applicants of their recommendations and the meeting at which the Board will issue funding decisions. The meeting of the full Board at which final funding decisions are made is open to applicants, who are allowed to testify if they believe that the staff has misunderstood their application or provided incorrect information to the Board. At this time, the full Board votes to approve or revise the funding recommendations.

During the onsite visit, the MBCC staff stated that it would treat faith-based organizations the same as any other applicant, and that the MBCC judges grant applications solely on the merits of the program. However, prior to the OCR’s onsite visit, the OCR requested information about the

faith-based organizations that had applied for funding from the MBCC in FY 2007 and FY 2008. During that time period, the MBCC received no applications from faith-based organizations. Therefore, it is difficult to assess how the MBCC's process for making awards affects faith-based organizations.

2. Procedures for Ensuring that Faith-Based Organizations Comply with Applicable Federal Civil Rights Laws

In its Data Response, the MBCC stated that it ensures compliance with the Equal Treatment Regulations by requiring applicants to assent to the Assurance Document when it originally applies, and the Special Conditions before drawing down funds. However, as discussed in Section I.A.1. of this Compliance Review Report, the Assurance Document does not mention the Equal Treatment Regulations, and the Special Conditions Form does not address them adequately. Additionally, as mentioned in Section I.B.1. of this Compliance Review Report, the MBCC has not received an application for funding from a faith-based organization during the review period. Despite the dearth of applications from faith-based organizations, the MBCC does not currently include a citation to the Equal Treatment Regulations in any of its application or monitoring documents.

II. Recommendations

The MBCC has some procedures in place for monitoring the civil rights compliance of its subrecipients, such as referencing some of the civil rights laws that the OCR enforces in its Assurance Document. To strengthen the MBCC's monitoring efforts, the OCR offers the following recommendations: (1) develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints; (2) correct and standardize the non-discrimination section of the MBCC's Assurance Documents and Special Conditions, which at a minimum should include referring to all the civil rights statutes and regulations that apply to subrecipients; (3) monitor for compliance with civil rights requirements during onsite monitoring visits; (4) provide training to DOJ subrecipients on the civil rights laws that the OCR enforces; and (5) ensure that subrecipients submit the EEO Certification to the OCR.

A. Develop Comprehensive Complaint Procedures

As discussed in Section I.A.4. of this Compliance Review Report, the MBCC is covered by the non-discrimination policies of the MDOJ, as outlined in the MDOJ EEO Plan. However, throughout this Compliance Review, MBCC staff who compiled the Data Response and participated in the on-site visit were unaware of the MDOJ's non-discrimination policies and procedures and their application to the MBCC. Therefore, the OCR recommends that the MBCC disseminate the MDOJ EEO Plan to its current staff, and develop a process for insuring that future employees are aware of these policies and procedures. In addition, *if* the MDOJ EEO Plan, including the Complaint Resolution Procedures, is intended to apply to beneficiaries of the MBCC, then the MDOJ EEO Plan's Dissemination Plan should address how the plan will be disseminated to beneficiaries. If the MDOJ EEO Plan is *not* intended to apply to beneficiaries, then the MBCC should address with the MDOJ the misleading use of the words "clients" and "customers" in the Complaint Resolution Procedures.

There are no procedures in place for addressing discrimination complaints from employees or beneficiaries of subrecipients of the MBCC. Accordingly, the MBCC should adopt a policy for addressing discrimination complaints that includes at a minimum the following elements:

- designating a coordinator who is responsible for overseeing the complaint process;
- notifying subrecipients' employees and beneficiaries of prohibited discrimination in funded programs and activities and the MBCC's policy and procedures for handling discrimination complaints;
- establishing written procedures for receiving discrimination complaints from subrecipients' employees and beneficiaries;
- referring each complaint to the appropriate agency for investigation and resolution, such as the U.S. Equal Employment Opportunity Commission or the Montana Department of Labor and Industry's Human Rights Bureau, or referring the complaint to the OCR, which will review the complaint and work with the MBCC to resolve the complaint;
- notifying the OCR in writing when the MBCC refers a discrimination complaint to another agency or when the MBCC investigates the complaint internally; and
- training MBCC program staff members on the responsibility to refer discrimination complaints, or potential discrimination issues, to the MBCC's complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

Information about the applicable laws, complaint forms, and the investigative process is available at the OCR's website at www.ojp.usdoj.gov/ocr/crc. Additionally, the OCR has drafted the enclosed template complaint procedures that the MBCC may find helpful as it develops procedures for addressing discrimination complaints from employees and beneficiaries of subrecipients. Developing a comprehensive policy for addressing discrimination complaints should be a top priority for the MBCC.

B. Correct and Standardize the Nondiscrimination Provisions in Assurance Documents, Special Conditions and Monitoring Forms

The OCR recommends that the MBCC provide a comprehensive and accurate description of the civil rights statutes and regulations with which subrecipients must comply. Further, all civil rights requirements should be stated consistently across all of the MBCC's documents, including the Assurance Document, the Special Conditions Form, and program monitoring forms. To that end, the OCR recommends that each program office use a certified assurances document that incorporates the following language or substantially similar language, which would apply to all subrecipients of DOJ funding, regardless of the amount of federal financial assistance at issue:

Recipient will comply (and will require any subgrantees or contractors to comply) with any applicable federal nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); the Age

Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations).

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and the MBCC.¹⁹

In addition to the above language that applies to all DOJ recipients, the following language, or substantially similar language, should be added to assurance for subrecipients receiving funding through Title V, Title II, and JABG programs.

Recipients will designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as a liaison in all civil rights matters with the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs and the Office for Civil Rights, Office of Justice Programs. Recipients will inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with the Office for Civil Rights, Office of Justice Programs.

The MBCC may also consider including in the certified assurances the following language or substantially similar language regarding language assistance services, which would apply to all DOJ programs:

Recipients are required to take reasonable steps to ensure meaningful access to their services to persons who, as a result of their national origin, are LEP. To help recipients understand and meet this obligation, the DOJ published *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, which can be found at 67 Fed. Reg. 41455 (June 18, 2002) or at www.lep.gov (LEP Guidance).

Finally, the MBCC may wish to add a sentence to the certified assurances stating that, in accordance with federal civil rights laws, the subrecipient shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.

¹⁹ Several documents that the MBCC uses refer to a subrecipient's obligation to forward to the OCR any finding of discrimination based upon race, color, religion, national origin, or sex that is made by a federal or state court, or a federal or state administrative agency after a due process hearing. However, this obligation does not extend to findings of discrimination based upon disability or age, as some of the MBCC forms state. Additionally, the OCR recommends that the subrecipients forward these finding directly to the OCR, although the MBCC may wish to receive a copy as well for monitoring purposes.

C. Monitor for Compliance with Federal Civil Rights Laws During Onsite Monitoring Visits

The MBCC is taking steps to ensure that MBCC subrecipients are complying with grant requirements by conducting periodic onsite monitoring visits. These onsite monitoring visits, however, do not fully address federal civil rights laws. Pursuant to the MBCC's responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the MBCC should expand the civil rights component to its onsite monitoring visits to encompass more than its current questions about EEOPs and possible findings of discrimination. The MBCC should be sure to evaluate a number of civil rights requirements that are binding on recipients of federal funding (e.g., whether the subrecipient has an EEOP on file or has sent one to the OCR for review, whether the subrecipient has findings of discrimination to report to the OCR, whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act, whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act and Title IX of the Education Amendments of 1972, or whether the subrecipient is taking steps to ensure meaningful access to its services to individuals with limited English proficiency). Additionally, the MBCC should ask questions on whether the subrecipient is complying with DOJ's Equal Treatment Regulations, including the prohibitions against using federal funds to engage in inherently religious activities and discriminating against program beneficiaries on the basis of religion. The OCR has developed the enclosed Federal Civil Rights Compliance Checklist that contains relevant questions regarding civil rights compliance; the MBCC may wish to adapt the checklist in creating its own monitoring tools.

D. Provide Training to DOJ Subrecipients on the Civil Rights Laws that the OCR Enforces

Other than a general discussion of the EEOP requirements during the annual training for new and continuing subrecipients, the MBCC does not currently provide any training for its subrecipients about their civil rights obligations. To ensure that subrecipients fully understand their obligations under federal civil rights laws, such as the obligation to comply with the DOJ's Equal Treatment Regulations, to provide services to LEP individuals, and to provide the OCR with findings of discrimination issued by a federal or state court or federal or state administrative agency on the basis of race, color, religion, national origin, or sex, the MBCC should provide periodic training programs for its subrecipients on the applicable federal civil rights laws. The MBCC should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the MBCC provides the training in person, during a teleconference, or through other means. The OCR is available to provide the MBCC with technical assistance in developing civil rights training programs.

E. Ensure that Subrecipients Submit the EEOP Certification to the OCR

As mentioned in Section I.A.3. of this report, the MBCC's annual training for new and continuing subrecipients does not include an accurate description of the EEOP requirements, although the EEOP Certification Form that the MBCC uses is correct. Be that as it may, all of the MBCC's forms and trainings should be internally consistent and provide a correct explanation of the EEOP requirements. The correct criteria for those recipients that must maintain an EEOP are as follows: (1) the recipient is a state or local government agency or any business; and (2) the recipient has 50 or more employees; and (3) the recipient receives a single

award of \$25,000 or more. A recipient that is required to maintain an EEOP must submit it to the OCR if it receives a single award of \$500,000 or more. Once a subrecipient determines its EEOP obligations, the MBCC should ensure that the appropriate documentation is submitted to the OCR. If a subrecipient is exempt from the requirement to maintain an EEOP, this exemption must be certified to the OCR. Additionally, if a subrecipient must maintain an EEOP, but is exempt from the submission requirement, that exemption must be certified to the OCR as well. The OCR has a sample EEOP Certification Form available, which can be accessed at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>. The OCR recommends that the MBCC requires subrecipients to use the OCR's Certification Form when certifying their exemption from the requirement to complete an EEOP or their exception from the requirement to submit an EEOP. We further recommend that the MBCC instructs subrecipients to submit these certifications directly to the OCR, although the MBCC may wish to receive a copy for monitoring purposes.

III. Conclusion

Except for the concerns we have raised in Section II of this Compliance Review Report, we find that the MBCC has taken steps to comply substantially with the federal civil rights laws that the OCR enforces. The MBCC needs to implement these recommendations to ensure complete compliance with applicable civil rights laws. On request, the OCR is available to provide technical assistance to the MBCC in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible MBCC official contact Attorney Advisor Debra Murphy to develop a timeline and goals for implementing the OCR's recommendations.**

Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Murphy at (202) 834-9756.

Sincerely,

/s/

Michael L. Alston
Director

Enclosures

