



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

VIA E-MAIL AND CERTIFIED MAIL

November 4, 2015

Janelle Moos
Executive Director
North Dakota Council on Abused Women's Services
525 North 4th Street
Bismarck, North Dakota 58501

Re: Compliance Review of N.D. Council on Abused Women's Servs. (14-OCR-0101)

Dear Ms. Moos:

I am writing to report the findings of the Compliance Review that the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) conducted of the North Dakota Council on Abused Women's Services (CAWS or Council).

On October 9, 2014, the OCR notified the CAWS that it received information about the CAWS' compliance with the federal regulation that the DOJ issued in January of 2004, Equal Treatment for Faith-Based Organizations (Equal Treatment Regulation or Regulation).¹ The Regulation instructs DOJ-funded organizations not to use federal funds for inherently religious activities or to discriminate in the delivery of services or benefits based on religion. Specifically, the OCR received information, including externally disseminated program materials, suggesting that the Council may not be in substantial compliance with the Equal Treatment Regulation, as to its Rural Domestic Violence, Dating Violence, Sexual Assault, and Stalking Assistance Program Grant Award (Rural Grants Award). Consequently, in accordance with 28 C.F.R. § 42.206, we initiated a compliance review of the CAWS' administration of this grant to evaluate (1) the Council's compliance with the Equal Treatment Regulation and (2) its efforts to apprise its staff about the Regulation and its requirements.² As part of this review, the CAWS responded to a data request from the OCR that addressed, among other topics, the Council's administration of the Rural Grants Award.

On November 19, 2014, the OCR conducted an onsite visit with the CAWS in Bismarck, North Dakota, to interview management and program staff about the Council's response to the OCR's

¹ 28 C.F.R. pt. 38 (2014); *id.* § 90.3.

² Because of its receipt of the Rural Grants Award, the CAWS is also subject to the nondiscrimination grant condition of the Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 13925(b)(13), which prohibits discrimination based on religion in the delivery of services or benefits. The enforcement provisions of the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) apply to this nondiscrimination grant condition. *Id.* § 13925(b)(13)(C).

data request. We also provided training for Council representatives about the OCR, its jurisdiction and authority, and the federal civil rights laws that affect DOJ-funded faith-based organizations. The OCR thanks you and your staff for assisting the OCR during its onsite visit.

After thoroughly reviewing the record in this matter, the OCR concludes that the CAWS and its contractor, the Western North Dakota Synod of the Evangelical Lutheran Church (Synod), are not in substantial compliance with the Equal Treatment Regulation. Specifically, the OCR concludes that (1) the CAWS did not provide sufficient training to employees and contractors about the Regulation; (2) the CAWS and the Synod engaged in inherently religious activities with federal funds (a) by using religious criteria to select speakers for events and (b) by preparing literature that advanced religion; (3) the CAWS and the Synod did not sufficiently track the Synod's activities to ensure that the Synod did not use federal funds to support inherently religious activities; and (4) the CAWS and the Synod improperly used religion as a criterion to determine the beneficiaries of certain federally funded services under the Rural Grants Award.³ This Compliance Review Report includes recommendations for addressing each of these deficiencies so that the Council and the Synod can satisfy their obligations under the Equal Treatment Regulation.

On August 28, 2015, the OCR issued a draft Compliance Review Report to the CAWS. The instant document, which is the final version of the Compliance Review Report, incorporates feedback the Council provided to the OCR about that draft. In responding to the draft, the CAWS noted that it takes the OCR's findings "extremely seriously," that it accepts responsibility for the deficiencies the OCR identified, and that it already started to implement our recommendations.⁴ We are heartened by this response and look forward to our continued collaborative efforts to improve the Council's administration of the Rural Grants Award.

I. Background

A. The CAWS

The CAWS is a nonprofit organization that is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code.⁵ An Executive Director leads the Council, with the assistance of an Assistant Director; together, they supervise eight employees. The CAWS' mission involves developing and strengthening effective responses to violence against women. To that end, the Council administers several grants from the Office on Violence Against Women (OVW) and serves as the OVW's statewide sexual assault and domestic violence coalition for North Dakota.⁶ These statewide coalitions support their member organizations, which provide

³ In addition to breaching the requirements of the Equal Treatment Regulation, the CAWS violated the prohibitions against religious-based discrimination contained in the Safe Streets Act and its regulations.

⁴ Letter from Timothy Q. Purdon, Robins Kaplan LLP, to Michael L. Alston & Christopher P. Zubowicz, OCR 1, 5 (Oct. 9, 2015) [hereinafter CAWS Response] (on file with the OCR).

⁵ CAWS, Form 990, U.S. Dep't of the Treasury, Internal Rev. Serv. 1 (2013), <http://bit.ly/1Ijp7Vn>.

⁶ OVW, Domestic Violence/Sexual Assault Coordination, Technical Assistance and Training Project, Award No. 2015-MU-AX-0013 to CAWS (Sept. 1, 2015 – Aug. 31, 2016). This grant program is subject to the nondiscrimination provision of the Safe Streets Act.

services to sexual assault and domestic violence victims, by providing funding, training and technical assistance, and public awareness of their members' services.⁷ As the designated coalition for North Dakota, the Council coordinates victim services within the state, such as by maintaining a communication network among service providers, and collaborates with federal, state, and local entities to respond to issues involving violence against women. In addition to receiving funds directly from the OVW, the CAWS is a subrecipient of OVW funds through the North Dakota Department of Health.⁸ The Council also educates North Dakotans about issues involving violence against women and seeks to impact legislation that addresses those issues.⁹

B. Rural Grants Award

The CAWS administers an OVW Rural Grants Award, in the amount of \$910,044.¹⁰ This grant program seeks to enhance victim safety in cases of sexual assault, domestic violence, dating violence, and stalking in rural communities by encouraging collaborative partnerships among criminal justice agencies, victim service providers, and community organizations to respond to these crimes.¹¹ The program also encourages communities to work together to develop education and prevention strategies that address interpersonal violence.¹²

In exchange for receiving its Rural Grants Award, the CAWS agreed to the following grant condition regarding the Equal Treatment Regulation:

The grantee agrees to comply with the applicable requirements of 28 C.F.R. Part 38, the Department of Justice regulation governing "Equal Treatment for Faith Based Organizations" (the "Equal Treatment Regulation"). The Equal Treatment Regulation provides in part that Department of Justice grant awards of direct funding may not be used to fund any inherently religious activities, such as worship, religious instruction, or proselytization. Recipients of direct grants may still engage in inherently religious activities, but such activities must be separate in time or place from the Department of Justice funded program, and participation in such activities by individuals receiving services from the grantee or a sub-grantee must be voluntary. The Equal Treatment Regulation also makes clear that organizations participating in programs directly funded by the Department of Justice are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion.¹³

⁷ See, e.g., Solicitation, OVW Fiscal Year 2015 State and Territorial Sexual Assault and Domestic Violence Coalitions Program 6 (Apr. 3, 2015), <http://go.usa.gov/3B8Ud>.

⁸ N.D. Dep't of Health, OVW STOP Violence Against Women Formula Grant Program, Award No. G15.322 to CAWS (Oct. 1, 2015 – Sept. 30, 2016) (subaward in the amount of \$16,562).

⁹ Form 990, *supra* note 5, at 2.

¹⁰ OVW, Rural Domestic Violence, Dating Violence, Sexual Assault, and Stalking Assistance Program Grant Award, Award No. 2013-WR-AX-0028 to CAWS (Oct. 1, 2013 – Sept. 30, 2016) [hereinafter Rural Grants Award].

¹¹ See, e.g., Solicitation, OVW Fiscal Year 2015 Rural Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program 7-8 (Jan. 21, 2015) [hereinafter Rural Grants Award Solicitation], <http://go.usa.gov/3B8P9>.

¹² *Id.* For the purposes of the Compliance Review Report, the term "interpersonal violence" means sexual assault, domestic violence, dating violence, and stalking.

¹³ Rural Grants Award, *supra* note 10, Special Condition No. 31.

The CAWS uses its Rural Grants Award funds to augment its services through a Faith-Based Initiative (Initiative). The Initiative seeks to provide information to members of rural faith-based communities about domestic violence and sexual assault issues and to strengthen their ability to respond adequately to those issues. The Council utilizes a contractor, the Synod, to administer this program, and entered into a contract to describe the Council's and the Synod's respective responsibilities (Synod Contract).¹⁴ The Synod Contract states that the Synod will comply with the Equal Treatment Regulation.¹⁵ Under the terms of the Synod Contract, the Synod relies on one person to provide services on behalf of the CAWS, whom the OCR refers to as the Initiative Coordinator or Coordinator. Each year during the three-year Rural Grants Award (October 1, 2013 – September 30, 2016), the Initiative Coordinator dedicated, or will dedicate, approximately 900 hours to the Initiative.¹⁶ At an hourly rate of \$36.10, over the three-year duration of the award, the CAWS will pay \$97,470 in OVW funds to the Synod. As a term of the contract, the Coordinator must submit quarterly timesheets and activity reports to the Council reflecting contract-related activities.¹⁷

II. The CAWS' Civil Rights Training for Employees and Initiative Coordinator

The CAWS regularly provides civil rights training to employees who work on OVW subawards it receives through the North Dakota Department of Health, but not to staff who administer awards the Council receives directly from the OVW. In 2009, the OCR issued a compliance review report to the Department of Health that evaluated its efforts to monitor the civil rights compliance of subrecipients, like the CAWS.¹⁸ As part of that now-closed review, the OCR recommended that the Department of Health require subrecipients, like the CAWS, to provide regular civil rights training, including on the Equal Treatment Regulation, to personnel who administer those subawards.¹⁹ Based on its onsite interviews, the OCR concludes that the Council continues to adhere to this requirement. Each time the CAWS receives a new subaward from the Department of Health, the Council provides civil rights training, through the OCR's online training program,²⁰ to those employees who will administer that particular program. But the CAWS has not required staff who administer grant awards that it receives directly from the OVW to participate in similar training. One employee who worked on such an award noted that the Council had never provided civil rights training to her. In connection with the Rural Grants Award, the CAWS did not provide any civil rights training to the Initiative Coordinator, although, according to the Coordinator, a manager discussed the Equal Treatment Regulation with her sometime during the last few years.

¹⁴ Contract for Services Between CAWS and Synod (Dec. 26, 2013) [hereinafter Synod Contract] (on file with the OCR).

¹⁵ Amendment to Contract for Services Between CAWS and Synod (Oct. 20, 2015).

¹⁶ CAWS, Budget Detail Worksheet, Rural Grants Award, at 6.

¹⁷ Synod Contract, *supra* note 14, § III.

¹⁸ N.D. Dep't of Health, No. 09-OCR-0065, Office for Civ. Rts. Compl. Rev. Rep. (U.S. Dep't of Justice Nov. 24, 2009), <http://go.usa.gov/3fgmA>.

¹⁹ *See id.* 8-9.

²⁰ *Online Training*, OCR, <http://go.usa.gov/3BpDf> (last visited Nov. 2, 2015).

The OCR's Findings and Recommendations:

The OCR commends the CAWS for providing civil rights training to employees who administer OVW subawards. The Council should expand this program by providing it, on an annual basis, to employees and contractors who handle grant programs where the OVW or the OJP directly awards funds to the CAWS. At a minimum, this training should provide information about the federal civil rights laws that the OCR enforces and a recipient's obligations under the Equal Treatment Regulation. To assist the CAWS, the OCR developed online training modules that cover these, and several other, topics.²¹ The Council should document a person's participation in each training segment. As to the Rural Grants Award, in implementing this recommendation, the Council should require each Synod representative who signed the Synod Contract to participate in this training and confirm they satisfied this requirement. As a first step in implementing these recommendations, the CAWS required all Council employees and contractors to view the OCR's online training no later than October 31, 2015.²²

III. Compliance with the Equal Treatment Regulation

In this section of the Compliance Review Report, the OCR evaluates whether the CAWS and the Synod comply with the Equal Treatment Regulation in providing training and technical assistance and other services under the Rural Grants Award. Based on the record the OCR developed in this matter, it concludes that they are not in substantial compliance with the Regulation's requirements because they used federal funds for inherently religious activities,²³ and they did not provide federally funded services to beneficiaries without regard to religion or religious belief.

A. Use of Federal Funds for Inherently Religious Activities

Based on the OCR's interviews of Council staff and the Initiative Coordinator, and its review of pertinent program materials, the OCR concludes that the CAWS and the Synod have not adhered to the requirements of the Equal Treatment Regulation. The CAWS and the Synod used Rural Grants Award funds to engage in inherently religious activities. In particular, in planning an OVW-funded event, the Initiative Coordinator used religious criteria to select certain speakers and to exclude others; she also used OVW funds to produce literature that advanced religion.

²¹ *Id.*

²² CAWS Response, *supra* note 4, at 5.

²³ In response to Executive Order 13,559, the DOJ proposes replacing the term "inherently religious activities" in the Equal Treatment Regulation with the term "explicitly religious activities." See Exec. Order No. 13,559, 75 Fed. Reg. 71,319, 71,320 (Nov. 17, 2010); Partnerships with Faith-Based and Other Neighborhood Organizations, 80 Fed. Reg. 47,316, 47,317-18 (proposed Aug. 6, 2015) (to be codified at 28 C.F.R. pt. 38). Because, as of the date of the OCR's Compliance Review Report, the DOJ has not finalized its proposed revisions to the Equal Treatment Regulation, the OCR continues to use the term "inherently religious activities" in discussing this aspect of the Regulation.

The CAWS and the Synod also have not adequately documented the separation between the Initiative Coordinator's inherently religious activities and federally funded activities.²⁴

In evaluating whether a recipient uses federal funds to engage in inherently religious activities, the OCR applies the Equal Treatment Regulation.²⁵ The Regulation provides the following examples of inherently religious activities and states the following conditions under which a funded faith-based organization may engage in them:

Organizations that receive direct financial assistance from the [U.S.] Department [of Justice] under any Department program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.²⁶

Thus, a recipient may only conduct inherently religious activities when it receives federal financial assistance if it satisfies the following two elements: (1) such activities are offered separately, in time or location, from the programs or services provided with federal aid, and (2) participation in such activities is voluntary for program beneficiaries.²⁷ The CAWS and the Synod used federal resources in ways that are inconsistent with these requirements; stated differently, they used federal financial assistance to engage in prohibited religious conduct.

²⁴ The OCR concludes that the CAWS is as responsible as the Synod for these problematic practices because it has a duty to monitor the Synod Contract, 28 C.F.R. § 42.203(b) (2014), and the Initiative Coordinator provided routine progress reports to the CAWS on all of her activities under the Synod Contract.

²⁵ The Regulation implements Executive Order 13,279, which emphasizes that federal agencies must administer federally funded programs consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the U.S. Constitution. Exec. Order No. 13,279, 67 Fed. Reg. 77,141, 77,142 (Dec. 12, 2002).

²⁶ 28 C.F.R. § 38.1(b)(1) (2014); *see also* Exec. Order No. 13,559, 75 Fed. Reg. at 71,320. The Equal Treatment Regulation contemplates that a religious organization can, in certain circumstances, engage in inherently religious activities with federal funds it receives indirectly from beneficiaries; however, because the CAWS is a recipient of federal financial assistance, neither it nor the Synod can rely on that provision. The Regulation distinguishes the obligations a faith-based organization has depending on whether it receives direct or indirect funding:

To the extent otherwise permitted by Federal law, the restrictions on inherently religious activities set forth in this section do not apply where Department funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

28 C.F.R. § 38.1(i). Because the CAWS receives the Rural Grants Award directly from the OVW, and not indirectly from beneficiaries, neither it nor the Synod can use federal financial assistance for inherently religious activities.

²⁷ *Id.* § 38.1(b)(1).

1. Most of the Synod's inherently religious activities occur separate from federally funded services

At the outset of its analysis on the issue of inherently religious activities, the OCR notes that, as to most of its activities, the Synod appropriately separates its religious activities from the services it provides under the Rural Grants Award. The Synod engages in myriad religious activities that satisfy the separate-in-time-or-location requirement of the Equal Treatment Regulation and that are well outside the ambit of the Synod Contract.²⁸ The OCR received no information suggesting that the Synod somehow uses funds under this contract to support the religious activities of anyone other than the Initiative Coordinator.

2. The Synod's federally funded program engaged in inherently religious activities

Within the scope of the Synod Contract, however, the OCR concludes that the CAWS and the Synod engaged in inherently religious activities by (1) selecting speakers because of their faith backgrounds and (2) developing program materials that advance religion.

- a. Speaker selection

Occasionally, the Initiative Coordinator selected event speakers because of the religious themes in their presentations, even though the Equal Treatment Regulation prohibits a recipient from using federal funds to proselytize or advance religion.²⁹ In October 2014, the Coordinator provided a training event entitled *Called to Compassion: Faith-Based Response to Violence in the Home*. As part of this event, the Coordinator developed a session called *Healing the Spirit of Children*. This session consisted of a panel discussion among five people who are survivors of child abuse or who are parents of children who witnessed domestic violence. During an interview with the OCR, the Initiative Coordinator acknowledged that she only selected speakers who could talk about how the faith community impacted their journey and how they picture God; she excluded anyone who did not have a faith background. Even though the Coordinator knew the speakers would include religious content in their presentations, she did not provide any disclaimer before they addressed the audience that the views of the speakers did not reflect the views of the OVW or the CAWS.

The OCR's Findings and Recommendations:

In designing the *Healing the Spirit of Children* session, the CAWS and the Synod improperly used federal funds to proselytize and advance religion. The Initiative Coordinator injected religious themes into the framework of the session; selected presenters based on their religious beliefs and backgrounds, to the exclusion of anyone who did not match her religious criteria; and

²⁸ See WESTERN NORTH DAKOTA SYNOD, EVANGELICAL LUTHERAN CHURCH IN AMERICA, <http://www.wndsynod.org> (last visited Nov. 2, 2015).

²⁹ 28 C.F.R. § 38.1(b)(1); Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of All Justice Department Program Participants, 69 Fed. Reg. 2832, 2833-34 (Feb. 20, 2004).

permitted attendees to believe that the religious content of the speakers' presentations represented the views of the OVW and the CAWS. Such an approach to administering a federally funded program is impermissible under the Equal Treatment Regulation. The CAWS and the Synod must more carefully monitor the Initiative Coordinator's activities to ensure that she designs events that are not rooted in religious content and that she selects speakers without applying a religious litmus test. Moreover, as required by the OVW's grant agreement with the CAWS, the Coordinator should provide an appropriate disclaimer in the program materials that the speakers are not speaking on behalf of the OVW.³⁰

b. Development of program materials that advance religion

The Initiative Coordinator used OVW funds to prepare program materials that advance religion. Under a prior Rural Grants Award, the Coordinator developed a document entitled *Caring for Victims of Domestic Violence: A Guide for Faith Community Leaders*.³¹ The guide provides helpful information about the dynamics of domestic violence and how to respond effectively to victims. But it also includes improper religious content. In interacting with domestic violence victims, the guide encourages faith leaders to "[l]ocate specific passages or convey teachings that demonstrate God's desire for healing and wholeness."³² If a victim is not part of the faith leader's community, the guide urges the faith leader to "ask him or her about their current or past connection to another faith community and whether you can help them re-connect."³³ In listing things a faith leader should do in interacting with a victim, the guide notes that the leader should "reassure her it is not her fault nor God's will," "assure [her] of God's love and your commitment to walk with her," and "pray with her."³⁴ The guide then reiterates that "God **does not intend** for abuse to happen. That is **not** part of God's plan for humanity."³⁵ Finally, the guide tells faith leaders to "[s]how and tell victims that they are deeply loved by God and by their spiritual community."³⁶ During the OCR's Compliance Review, it learned that, in the fall

³⁰ The Rural Grants Award requires a recipient to add the following disclaimer to all OVW-funded materials and publications:

This project was supported by Grant No. _____ awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

Rural Grants Award, *supra* note 10, Special Condition No. 30. Because the CAWS did not adhere to this special condition in connection with the *Called to Compassion* event and did not appropriately separate the Synod's federally funded activities from its inherently religious activities, the OCR is forwarding the Compliance Review Report to the OVW. The OCR anticipates that the OVW will evaluate whether either deficiency constitutes a "substantial failure" of the CAWS to comply with the terms and conditions of the Rural Grants Award. *Id.* Special Condition No. 19.

³¹ CAWS Response to OCR Data Request No. 10 (Nov. 6, 2014).

³² CAWS, *Caring for Victims of Domestic Violence: A Guide for Faith Community Leaders* 7 (undated).

³³ *Id.*

³⁴ *Id.* 8.

³⁵ *Id.* 9 (emphasis in original).

³⁶ *Id.* The end of the guide notes that "[t]he opinions, findings, conclusions, and recommendations expressed in this project are those of the authors and do not necessarily reflect" the OVW's views. *Id.* 25.

of 2013, two individuals raised concerns about the religious content of this document with a CAWS managerial employee and suggested that it did not satisfy the DOJ's standards on this topic. According to these witnesses, the management representative ignored their concerns. Instead, this manager submitted a draft of the document to the OVW for review, which it approved on January 11, 2013.³⁷ During an interview with the OCR, the manager said she would be concerned if a guide for churches *did not* contain religious content, because it would be offensive to the faith community.

The OCR's Findings and Recommendations:

The Synod improperly used federal resources in developing the *Caring for Victims of Domestic Violence* guide, because it advances religion. Rather than simply conveying information about domestic violence issues and available resources, the guide encourages faith leaders to inject religious content into their communications with victims. It adopts a perspective that is not neutral toward religion; instead, it expressly advocates religion and the religious practice of prayer as a way to assist victims. This is inappropriate under the Equal Treatment Regulation.

When the OCR notified the CAWS of this issue in its draft Compliance Review Report, the Council acknowledged that the *Caring for Victims of Domestic Violence* guide contains improper religious content, but explained that the CAWS "may have" concluded that the document satisfied the Equal Treatment Regulation because the OVW approved it.³⁸ As a result, the CAWS attributes the manager's handling of this project to poor training and a lack of education on "the seriousness of the issue."³⁹ This response is only somewhat persuasive. The OCR certainly understands how someone, absent sufficient training, might mistakenly conclude that the OVW's approval of a document, as to compliance with one grant requirement, means that the document satisfies all grant requirements.⁴⁰ But it is difficult to fully credit this explanation for the CAWS' decision to include religious content in the *Caring for Victims of Domestic Violence* guide, for two reasons. First, the OVW did not inform the CAWS that the guide complied with the Equal Treatment Regulation, and in fact only reviewed it for the narrow purpose of determining whether the document comported with the Rural Grants Award's programmatic requirements. Second, we have doubts about whether additional training would have led to a different outcome. While onsite, the OCR provided a training for the CAWS on the Equal Treatment Regulation that discussed the standard at issue in this section of the Compliance Review Report. The manager who oversaw the Council's vetting of the guide attended this training. Just a few hours later, during an interview with the OCR, the manager suggested that CAWS-produced documents for religious audiences should include religious content. Given this context, it is difficult to envision how providing more training to this manager would remedy her misunderstanding of what the Equal Treatment Regulation prohibits.

³⁷ The OVW provided minor feedback on the document and did not review it for compliance with the Equal Treatment Regulation.

³⁸ CAWS Response, *supra* note 4, at 2.

³⁹ *Id.*

⁴⁰ The OCR and the OVW are working together to ensure that recipients better understand our offices' respective roles in evaluating their compliance with the programmatic and Equal Treatment Regulation requirements of the OVW's grant programs.

In any event, to remedy this deficiency, if the CAWS and the Synod want to continue to use the *Caring for Victims of Domestic Violence* guide in connection with OVW-funded programs, they must remove from the guide the above-quoted references to religion, as well as any other religious passages the OCR identifies. Before the Initiative Coordinator finalizes additional OVW-funded materials, the CAWS’ Executive Director should review them to ensure they satisfy the Regulation and do not include improper religious content.

3. The CAWS and the Synod did not appropriately document the Initiative Coordinator’s allocation of her time between OVW-funded and inherently religious activities

The CAWS and the Synod did not provide sufficient documentation to allow the OCR to determine when the Initiative Coordinator performed tasks under the Synod Contract, versus when she engaged in inherently religious activities for the Synod. If a recipient engages in federally funded and inherently religious activities, it must demonstrate that these activities are separate from one another.⁴¹ This obligation is especially important when a person engages in both kinds of activities at the same site and on the same day.⁴² In those circumstances, an individual should document “the number of hours spent on the Federally-funded program and the actual time during which they worked on that program.”⁴³ By providing this information, the OCR can confirm that a recipient or a contractor adheres to the Equal Treatment Regulation by scrupulously separating OVW-funded activities from inherently religious ones.

While the Initiative Coordinator prepares time-and-activity reports, they have been insufficiently detailed. Each day, the Coordinator prepares a report that purports to track her faith-based and OVW-funded activities. On May 7, 2014, for instance, she recorded the following information on her time-and-activity report:

Date	Time(s)	Number of Hours	Faith-Based Activity	Other/Non-Faith-Based Activity	Mileage
7/W[ednesday]	10:00 – 6:00	8	Parish – worship, planning, meetings, pastoral care, admin, outreach 3	Office and Mohall Ministerial Meeting 5	104

This entry has four material weaknesses. First, it does not clearly identify which activities the Initiative Coordinator conducted under the CAWS’ OVW-funded contract with the Synod. Second, presuming that the category called “Other/Non-Faith-Based Activity” means “OVW-

⁴¹ INTERAGENCY WORKING GROUP ON FAITH-BASED AND OTHER NEIGHBORHOOD PARTNERSHIPS, REPORT TO THE PRESIDENT: RECOMMENDATIONS OF THE INTERAGENCY WORKING GROUP ON FAITH-BASED AND OTHER NEIGHBORHOOD PARTNERSHIPS 13 (Apr. 2012) [hereinafter REPORT TO THE PRESIDENT], <http://go.usa.gov/3GTXC>; see also Exec. Order No. 13,559, 75 Fed. Reg. 71,319, 71,321 (Nov. 17, 2010) (requiring the interagency working group to submit this report to the President).

⁴² REPORT TO THE PRESIDENT, *supra* note 41, at 13.

⁴³ *Id.*

Funded Activity,” the OCR cannot identify where the Initiative Coordinator performed the listed activities. The Coordinator uses offices at her residence and at Synod parishes; however, she does not note which office she used on May 7. Third, the Initiative Coordinator does not provide the times when she performed faith-based and federally funded activities. Fourth, because of the insufficient detail as to the location and times of events on May 7, it is not possible to evaluate whether the CAWS should reimburse the Synod for the entire mileage amount listed or a smaller, pro-rated amount. The *Report to the President*, which contains the federal interagency working group's recommendations on implementing Executive Order 13,559, emphasizes that, where a recipient incurs costs to engage in federally funded and privately funded religious programs, it cannot be reimbursed with federal funds for all those costs.⁴⁴ Otherwise, federal funds would improperly support inherently religious activities. Instead, a recipient should only receive a pro-rated amount that reflects the amount of time it spent on federally funded activities.⁴⁵ This log, which resembles the other daily logs that the CAWS provided to the OCR, highlights a pervasive failure by the Coordinator to document her activities in sufficient detail and with sufficient care. As a result, the OCR cannot determine whether the Initiative Coordinator conducted inherently religious activities at a different time or location than activities paid for by the OVW.⁴⁶

The CAWS and the Synod permitted the Initiative Coordinator to submit insufficient time-and-activity reports, even though they knew at the time that the Coordinator was likely not providing enough detail about her activities. On June 16, 2014, a CAWS employee raised this issue with the Coordinator and a CAWS manager. Citing the standard the OCR discusses above and providing a copy of the *Report to the President*, this employee asked the Coordinator to note the times when she engaged in faith-based and OVW-funded activities.⁴⁷ In response to this e-mail, the Coordinator complained to the CAWS manager. As the Coordinator recounted to the OCR, she viewed the task of tracking her time as “impossible” and could not envision how she would do that, even though she reviewed and understood the obligation, as outlined in the *Report to the President*. The manager agreed with the Coordinator, and told her to disregard the CAWS employee's instructions. Then, the manager sent the following e-mail to the subordinate employee: “This request is too burdensome for a contractor. She will spend more time documenting than working with clergy, please rethink this and simplify.”⁴⁸ In discussing this

⁴⁴ *Id.* (citing OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR NO. A-122, COST PRINCIPLES FOR NON-PROFIT ORGANIZATIONS § A.4.a.(2)).

⁴⁵ A CAWS manager acknowledged that she does not adhere to this requirement. Instead, if she asks the Initiative Coordinator to travel from Bottineau, North Dakota, to another city for OVW-funded work, and the Coordinator also performs religious activities while at that location, the CAWS pays for the Coordinator's entire mileage, rather than a pro-rated amount of it.

⁴⁶ The Initiative Coordinator also acknowledged that she did not accurately describe the activities she performed under the CAWS' contract with the Synod. Instead, she often used the generic entry “Office: files, research, phone, e-mail, writing, recordkeeping, webinars” to document her time, without regard to whether she actually performed those tasks. In discussing such an entry for May 6, 2015, which she submitted to the CAWS under the Synod Contract, the Coordinator conceded to the OCR that she did not accurately reflect her activities on that day. From December 1, 2013 – September 30, 2014, the Coordinator used this same entry 188 times. While the accuracy of the Initiative Coordinator's reports to the CAWS is beyond the scope of the OCR's Compliance Review, we include this information in the Compliance Review Report so that the OVW is aware of it.

⁴⁷ E-mail from CAWS Employee to Initiative Coordinator (June 16, 2014) (copying CAWS manager).

⁴⁸ E-mail from CAWS Manager to CAWS Employee (June 19, 2014).

response with the OCR, the manager stated that requiring the Coordinator to track her time and activities, as requested by the employee, is not the best way for the Coordinator to spend her time. Perhaps not surprisingly, given the manager's decision to disregard a federal standard, the Initiative Coordinator did not change how she prepared subsequent time-and-activity reports.

The OCR's Findings and Recommendations:

The CAWS and the Synod have not adopted adequate measures to ensure the Initiative Coordinator only uses OVW funds for exclusively sectarian activities. The record in this matter shows that the CAWS and the Synod abdicated their responsibility to monitor the work of the Initiative Coordinator. In fact, when a Council employee raised concerns with a manager about the very topic the OCR discusses in this section of its Compliance Review Report, the manager instructed the Coordinator to continue to submit her inadequate time-and-activity reports. Even during the OCR's site visit, the manager – who had attended the OCR's training on the Equal Treatment Regulation earlier that day – continued to suggest to the OCR that compliance with this aspect of the Regulation is unnecessary and unimportant. Such a bewildering response by a senior manager raises serious questions about the Board of Directors' (Board) oversight of the organization's administration of the Rural Grants Award, the Executive Director's management of the Assistant Director, and the Assistant Director's monitoring of the Synod contract. Recognizing the significance of the OCR's findings and recommendations in its August 2015 draft Compliance Review Report, the Council's Board has agreed to schedule an executive session briefing with the OCR to discuss the final Compliance Review Report.⁴⁹ In addition, the CAWS' Executive Director, rather than the manager whose conduct gives rise to these findings, is now monitoring the Synod Contract to ensure the Synod complies with the Equal Treatment Regulation.⁵⁰ The OCR appreciates the CAWS' willingness to take this preliminary corrective action to address our findings and thereby improve its oversight of the Synod Contract.

The CAWS also agreed that, when the Coordinator performs religious and federally funded activities on the same day, the CAWS and the Synod will require her to complete a time-and-activity report that addresses the four deficiencies we identify above. Effective October 1, 2015, the CAWS began to require the Coordinator to complete a report that substantially resembles the format of the following report template:⁵¹

⁴⁹ CAWS Response, *supra* note 4, at 5.

⁵⁰ *Id.*

⁵¹ *Id.* The OCR added content to the table for illustrative purposes only and does not purport to describe the Coordinator's actual activities on any particular day.

CAWS/Synod Faith-Based Initiative: Coordinator's Time-and-Activity Report (Sample)

Location	Time	Identification of Faith-Based Activity	Description of OVW-Funded Activity
Travel from Bottineau to Mohall	8:00 a.m. – 9:00 a.m.		
Mohall Synod Parish – Sanctuary	9:00 a.m. – 10:00 a.m.	Worship service	
Mohall Synod Parish – Office	10:00 a.m. – 1:00 p.m.		Research potential candidates for Faith-Based Collaborative; draft/revise e-mails to community organizations re: conference on addressing domestic violence and sexual assault in faith communities
Mohall Synod Parish – Office	2:00 p.m. – 3:00 p.m.	Pastoral care	
Travel from Mohall to Bottineau	3:00 p.m. – 4:00 p.m.		
Total Non-Travel Hours		2 (40% of Non-Travel Hours)	3 (60% of Non-Travel Hours)

Travel	Mileage	Allocation of Mileage to Faith-Based Program(s)	Allocation of Mileage to OVW-Funded Program
From Bottineau to Mohall	52	.4 x 52 = 20.8	.6 x 52 = 31.2
From Mohall to Bottineau	52	.4 x 52 = 20.8	.6 x 52 = 31.2
Total Mileage Reimbursement Amount			(31.2 x .575 ⁵²) + (31.2 x .575) = \$35.88

Because the time-and-activity report focuses on the Initiative Coordinator's OVW-funded activities, the OCR will monitor whether each report contains sufficient detail showing that these activities only included secular components. In contrast, it is sufficient for the Coordinator to provide general information about her religious activities.

B. Efforts to Provide Federally Funded Services to Beneficiaries, Irrespective of Their Religion or Religious Belief

While the CAWS and the Synod generally provide OVW-funded services to beneficiaries, without regard to their religion, in some instances, they improperly used religion as a criterion to

⁵² Effective January 1, 2015, the mileage reimbursement rate for personally owned vehicles is \$.575. GEN. SERVS. ADMIN., PRIVATELY OWNED VEHICLE (POV) MILEAGE REIMBURSEMENT RATES, <http://go.usa.gov/3AS2G> (last visited Nov. 2, 2015). Going forward, the CAWS should monitor any changes to this reimbursement rate to ensure it reimburses the Initiative Coordinator at the proper rate.

determine the beneficiaries of federally funded services.⁵³ Under the Equal Treatment Regulation, a recipient of federal financial assistance “shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.”⁵⁴ When a recipient elects to receive federal funding, the Regulation prohibits it from using any religion-based criteria to exclude beneficiaries. This safeguard protects all potential program participants, regardless of their religious beliefs. Indeed, the Regulation protects applicants who belong to no religion as much as those who are from a non-Christian religious tradition.⁵⁵ In examining the CAWS’ and the Synod’s compliance with this requirement, the OCR considered the Initiative Coordinator’s efforts to (1) provide training and technical assistance on domestic violence and sexual assault issues, (2) manage a group of Christian leaders who focus on those same issues, and (3) support a group of domestic violence and sexual assault survivors.

1. Training and technical assistance activities

The Synod’s Initiative Coordinator heavily relies on events to provide training and technical assistance on domestic violence and sexual assault issues to faith-based leaders, crisis center staffs, and other community stakeholders. In evaluating whether the Coordinator provides these services to beneficiaries in a nondiscriminatory manner, the OCR must first identify who, exactly, the beneficiaries are in the context of the Rural Grants Award. Neither the Equal Treatment Regulation nor the explanation and justification for the final version of the Regulation defines the term “beneficiary.” To guide the OCR’s analysis of this issue, it considers the plain meaning of this term and the purpose of the Rural Grants Award program.⁵⁶ As ordinarily used, a beneficiary is “one that benefits from something.”⁵⁷ Consistent with this definition, in providing training to recipients and subrecipients of DOJ financial assistance on their nondiscrimination obligations, the OCR explains that a beneficiary is “the person who ultimately receives the federally funded services or benefits.”⁵⁸ Through the Rural Grants Award, the OVW bolsters the ability of stakeholders to collaborate with one another to prevent and address sexual assault, domestic violence, dating violence, and stalking in rural communities.⁵⁹ Rather

⁵³ The OCR concludes that the CAWS is as responsible as the Synod for these problematic practices because it has a duty to monitor the Synod Contract, 28 C.F.R. § 42.203(b) (2014), and the Initiative Coordinator provided routine progress reports to the CAWS on all of her activities under the Synod Contract.

⁵⁴ 28 C.F.R. § 38.1(d) (2014); *see also* Exec. Order No. 13,559, 75 Fed. Reg. 71,319, 71,320 (Nov. 17, 2010).

⁵⁵ Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of All Justice Department Program Participants, 69 Fed. Reg. 2832, 2837 (Feb. 20, 2004) (noting that the “language prohibiting faith-based organizations from discriminating against program beneficiaries on the basis of ‘religion or religious belief’ is sufficiently explicit to include beneficiaries who hold no religious belief”); *see also* Exec. Order No. 13,559, 75 Fed. Reg. at 71,320 (explaining that recipients “should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice”).

⁵⁶ *Mo. Dep’t of Soc. Servs. v. U.S. Dep’t of Educ.*, 953 F.2d 372, 375 (8th Cir. 1992) (affirming U.S. Department of Education’s interpretation of its regulations as rational and consistent with the regulations’ plain meaning); *see also* *Decker v. Nw. Envtl. Def. Ctr.*, 133 S. Ct. 1326, 1337 (2013); *Auer v. Robbins*, 519 U.S. 452, 461-62 (1997).

⁵⁷ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 114 (11th ed. 2003).

⁵⁸ *Online Training*, OCR, <http://go.usa.gov/3BpDf> (last visited Nov. 2, 2015).

⁵⁹ *See* Rural Grants Award Solicitation, *supra* note 11, at 7-8.

than focusing on providing direct services to victims, the CAWS project develops the capacity of individuals to interact with potential and actual victims of interpersonal violence. Guided by the definition of "beneficiary" and the purpose of the Rural Grants Award, the OCR concludes that, as to the events the Initiative Coordinator planned, the beneficiaries are those who attended each event, and prospective beneficiaries are those who could have attended it.

Generally, in advertising events, the Coordinator invites representatives from a range of secular and sectarian constituencies, including rape crisis centers and churches. For instance, in October 2014, the Coordinator organized a training event entitled *Creating Communities of Care: Responding to Violence in the Home*. Several secular organizations co-sponsored the event, and it included attendees from diverse fields, including social services, law enforcement, and nursing. By including participants from a wide variety of fields, both inside and outside the faith-based sphere, the Initiative Coordinator provided services to beneficiaries and prospective beneficiaries without regard to their religion. In at least one instance, however, the Coordinator planned an event that on its face suggested its focus would be on using religion to respond to victims. As the OCR explained in an earlier section of the Compliance Review Report,⁶⁰ the Initiative Coordinator provided a training event entitled *Called to Compassion: Faith-Based Response to Violence in the Home*. The CAWS co-sponsored the event with Prevent Child Abuse of North Dakota, which is also a secular organization. In advertising the event, the Coordinator emphasized that it was open to members of all faith communities. But by stating that the event's focus is on providing a "faith-based response" to victims, rather than on simply serving victims in faith communities, the Initiative Coordinator might have dissuaded representatives from secular organizations who do not want to provide sectarian services to victims.

The OCR's Findings and Recommendations:

The CAWS and the Synod should be ever mindful that the services they provide through the OVW's Rural Grants Award must be available to everyone, irrespective of their religious background. Generally, the Initiative Coordinator adheres to this requirement in providing training and technical assistance, as evidenced by her efforts to include secular and sectarian constituencies in the *Communities of Care* event. Unfortunately, she did not fully meet this standard in designing the *Called to Compassion* event. The CAWS should ensure the Synod understands how the Equal Treatment Regulation applies to any event the Coordinator plans with Rural Grants Award funds. As to future events, the CAWS should caution the Synod against framing them in a way that suggests that religion must be part of a response to victims. The CAWS should also advertise each event on its website to reach a broad audience and to ensure that anyone who might be interested in the event can learn about it. In the website notice and in any advertisements for the event, the CAWS and the Synod should note that the event is open to all, despite the targeted nature of the event's content.

⁶⁰ Compliance Review Report, *supra* Section III.A.2.a.

2. The Faith-Based Collaborative

The Synod's Initiative Coordinator created a group of Christian leaders, which the CAWS refers to as the Faith-Based Collaborative, to address domestic violence, dating violence, and sexual assault issues in the faith community. The Coordinator provides training and technical assistance to the group, and facilitates communications among its members.⁶¹ The members of the Faith-Based Collaborative are the beneficiaries of the services that the Coordinator provides under the Rural Grants Award, and prospective beneficiaries are people who could join the group. According to the Coordinator, the Faith-Based Collaborative's goal is to develop relationships between churches and advocates so that more people in the faith community discuss issues involving interpersonal violence and can respond to members who need help.⁶² In identifying potential members, the Coordinator considers whether candidates can attend local community events, provide transportation for survivors, and respond to calls from survivors. As of the time of the OCR's site visit, a CAWS manager reported to the OCR that the Faith-Based Collaborative consisted of four or five Christian clergy in two rural counties in North Dakota.

The OCR's Findings and Recommendations:

In developing and administering the Faith-Based Collaborative, the CAWS and the Synod unduly limit the pool of beneficiaries and prospective beneficiaries of this federally funded service, in contravention of the Equal Treatment Regulation. The purpose of the Collaborative is to create a venue for faith leaders and advocates to discuss ways to improve their responses to victims in faith communities. Despite this stated goal, no advocates serve on the Collaborative and the CAWS' website provides insufficient information about the purpose of the Collaborative and how advocates can participate in it. In addition, the website does not adequately explain that leaders of any faith tradition can be members of the Collaborative. To remedy these problems, the CAWS should ensure the Synod understands its obligations under the Equal Treatment Regulation in administering the Faith-Based Collaborative. It should also revise its website to provide more information about the Collaborative and to state that it is open to representatives of any victim services advocacy organization or faith tradition. Any advertising materials that the CAWS or the Synod develops for the Collaborative should contain similar information. To reduce the risk that secular organizations may view the Faith-Based Collaborative as limited to faith-based members, the CAWS should also consider changing the name of the group to reflect its broader purpose.

3. Life After Fear Survivors Group

Under the Synod Contract, the Initiative Coordinator provides support to a group of domestic violence and sexual assault survivors, called Life After Fear (LAF). The group enables members to share their experiences as survivors with the community by, for instance, participating in panel discussions at conferences. As to these activities, LAF and its members are the beneficiaries of

⁶¹ CAWS, Purpose of Application, Rural Grants Award, at 9, 13-16.

⁶² The CAWS' website only obliquely discusses the Faith-Based Collaborative. See *Outreach*, CAWS NORTH DAKOTA, <http://bit.ly/1hBHqvy> (last visited Nov. 2, 2015).

the services that the Initiative Coordinator provides under the Rural Grants Award, while prospective beneficiaries are those who could become members. According to a CAWS manager, LAF does not use any religious criteria for membership, although the Initiative Coordinator screened everyone interested in becoming a member. The manager also noted that many survivors discuss the importance of their faith and their faith-based community to their healing and recovery. Another person whom the OCR interviewed corroborated this view; she said that members rely on their faith backgrounds in participating in the group, noting that all LAF members hold strong Christian beliefs. Several community members told this interviewee they would be uncomfortable attending LAF events because of the events' religious content.

The OCR's Findings and Recommendations:

The OCR is concerned that the CAWS and the Synod adopted de facto religious criteria to select LAF members, thereby excluding survivors who may not be Christian and who may, in fact, belong to no particular faith tradition. We reiterate that, under the Equal Treatment Regulation, anyone, irrespective of religion or religious beliefs, should be able to participate in federally funded programs and activities.⁶³ The Initiative Coordinator, who is a faith leader, screened all the applicants. She knows that all the members are Christian, and that many of them include religious content in the messages they deliver at OVW-funded events. The homogeneity of the group and the religious content of their messages suggest that the Coordinator is favoring religious messages and discouraging others with different views from joining the group. Indeed, an interviewee suggested to the OCR that survivors who do not share the religious views of current LAF members are dissuaded from becoming members themselves. If the CAWS and the Synod continue to support the LAF group with OVW funds, they should make a concerted effort to recruit members who have a variety of perspectives and religious backgrounds. As part of this effort, the CAWS should add information to its website that describes LAF, the non-religious criteria that the CAWS and the Synod use to select participants in it, and whom interested persons should contact to learn more about it.

IV. Conclusion

This letter serves as notice that the OCR has concluded that the CAWS must undertake additional steps to ensure compliance with the Equal Treatment Regulation. Immediately upon receipt of this letter, please have a representative from the CAWS notify Attorney Advisor Christopher Zubowicz at 202.305.9012 or christopher.zubowicz@usdoj.gov whether the Respondent wishes to engage in voluntary compliance negotiations before the DOJ makes a determination about the Respondent's compliance or noncompliance with the Safe Streets Act and its regulations.⁶⁴ As part of this discussion, the CAWS should be prepared to discuss further its responses to the Compliance Review Report's findings and recommendations. Thank you for

⁶³ Moreover, participants in federally funded programs are free, consistent with their First Amendment rights, to discuss faith's role in their lives and its significance to them. See REPORT TO THE PRESIDENT, *supra* note 41, app. A para. III.B. In contrast, as we discuss in this section of the Compliance Review Report, a leader of a federally sponsored program cannot communicate a preference for a religious perspective, as part of that program.

⁶⁴ See 28 C.F.R. § 42.206(e)(3) (2014).

Janelle Moos, Executive Director
North Dakota Council on Abused Women's Services
November 4, 2015
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the cooperation and assistance that your staff provided to OCR Attorney Advisors Christopher Zubowicz and Benjamin Hernandez-Stern throughout this Compliance Review.

The CAWS and the Synod should be mindful that federal law protects persons who participated in the OCR's Compliance Review from retaliation for having provided information to the OCR. The OCR will initiate an investigation if it should receive credible evidence of reprisal.

This Compliance Review Report is a public document that the OCR will post on its website.

Sincerely,

X 

Michael L. Alston
Director
Signed by: MICHAEL ALSTON

cc: Tara Muhlhauser
President, Board of Directors
Council on Abused Women's Services
VIA E-MAIL

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