



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

October 6, 2008

John D. Glass
Acting Commissioner
Alaska Department of Public Safety
5700 East Tudor Road
Anchorage, Alaska 99507-1225

Re: Alaska Department of Public Safety Compliance Review (08-OCR-0286)

Dear Commissioner Glass:

On June 18, 2007, the Office for 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 Alaska Department of Public Safety (DPS), in accordance with federal regulation 28 C.F.R. ' 42.206. The focus of the review was on the DPS' compliance with applicable federal civil rights laws along with the DPS' monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the DPS' implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations].

On July 23, 2008, the OCR conducted an onsite visit to the DPS' offices in Anchorage, Alaska, to interview DPS administrators and to conduct a training program for DPS administrators and program staff on the federal civil rights laws that the OCR enforces. The OCR would like to thank DPS staff, especially grants manager Sherry Hassell and grant program specialist Lauree Morton, for assisting OCR attorneys Shelley Langguth and Christopher Zubowicz during their onsite visit.

Based on the DPS' responses to our data request and the information we gathered during and subsequent to our onsite visit, the OCR sent the DPS a draft Compliance Review Report on September 10, 2008. During an October 1, 2008, telephone conversation, Ms. Morton told Ms. Langguth that the DPS had some corrections to the OCR's description of the DPS' Council on Domestic Violence and Sexual Assault's (CDVSA) Onsite Audit Checklist that the OCR discusses in Section II.D of this Compliance Review Report. In accordance with Ms. Morton's

comments, the OCR slightly modified its discussion of the CDVSA's Onsite Audit Checklist on pages 12-13 of this Compliance Review Report.

In regard to the limited scope of this compliance review, the OCR concludes that the DPS appears to be in substantial compliance with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about whether the DPS has adequate complaint procedures in place to respond to discrimination complaints from beneficiaries and employees of subrecipients, and whether it is sufficiently training and educating its subrecipients on applicable federal civil rights laws. The following Compliance Review Report includes recommendations for improving the DPS' methods for monitoring the civil rights compliance of subrecipients.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines the DPS' 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. The Report then focuses on the DPS' 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 DPS' general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the DPS 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

Depending on the nature of the DOJ grant program, the DPS administers DOJ subawards through its Grants Administration Office (GAO) or Council on Domestic Violence and Sexual Assault (CDVSA). The CDVSA is an administrative, policy-making body composed of the State Commissioners from the DPS, the Department of Health and Social Services, the Department of Law, and the Department of Education, along with three members of the public appointed by the Governor. The CDVSA implements the DPS grant programs dealing specifically with domestic violence or sexual assault, and the GAO is responsible for administering all other grant programs.

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As for the grant programs administered by the GAO, before the GAO releases funds, subrecipients must sign the OJP's Standard Assurances along with Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, found at www.ojp.usdoj.gov/funding/forms.htm. Paragraph 6 of the Standard Assurances states that subrecipients and their contractors agree to comply with the applicable nondiscrimination provisions in federal law, including 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); and Executive Order 13279 (equal protection of the laws for faith-based and community organizations). Subrecipients must also complete and submit to the GAO the OJP's Equal Employment Opportunity Plan (EEO) Certification Form if a subrecipient is claiming a full or partial exemption from the EEO requirement.

In addition to the Standard Assurances and Certifications, subrecipients of funds administered by the GAO must sign a grant award document, whereby they agree to abide by the attached Grant Agreement. Under section "Article XI – Certification" of the Grant Agreement, subrecipients assure and certify that they will comply with all applicable state and federal regulations, policies, guidelines, and requirements. Under paragraph D of Article XI, subrecipients agree to forward to the DPS for submission to the OCR any finding of discrimination against the subrecipient by a federal or state court or federal or state administrative agency on the grounds of race, color, religion, national origin, or sex; under paragraph E, subrecipients agree to formulate and submit an EEO to the OCR, as required. Also, paragraph N of Article XI requires subrecipients to certify that they will provide meaningful access to their services to persons with limited English proficiency (LEP) and references the DOJ guidance on this requirement at www.lep.gov.

While paragraph 6 of the Standard Assurances governing GAO-administered grant programs references Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, the GAO Standard Assurances, Certifications, and the Grant Agreement do not mention the DOJ's Equal Treatment Regulations contained at 28 C.F.R. pt. 38.

For grants funded through the CDVSA, all subrecipients must sign an Assurances document; paragraph 1 of the Assurances requires subgrantees to "comply with the requirements of the U.S. Civil Rights Act (42 U.S.C. 2000d¹ and 29 U.S.C. 794²) and the Americans with Disabilities Act (ADA) on employing staff, serving clients, and as otherwise appropriate." Also, paragraph 7 of

¹ Please note that the correct citation is 42 U.S.C. § 2000d.

² Please be aware that 29 U.S.C. § 794 is actually a citation to Section 504 of the Rehabilitation Act of 1973, and not the Civil Rights Act of 1964.

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the Assurances states that subrecipients shall not discriminate based on race, color, creed, or physical disability in the provision of services. The CDVSA subrecipients under DOJ funding programs must also submit a Certification of Compliance to the CDVSA, whereby each subrecipient certifies that it will maintain data to ensure that it is delivering services in an equitable manner to all segments of the service population; that its employment practices comply with EEO requirements at 28 CFR § 42.207 and § 42.301 *et seq.*; and that its projects and activities provide meaningful access to LEP persons as required by Title VI of the Civil Rights Act and Executive Order 13166. On this Certification of Compliance, the subrecipient must also list the name of the subrecipient's employee who is responsible for reporting civil rights findings of discrimination to the CDVSA. A CDVSA grants manager explained to the OCR that the employee listed on this Certification is usually the individual within the subrecipient's organization to whom other employees and beneficiaries report allegations of discrimination.

In addition to the above-referenced documents, the federal grant programs administered by the CDVSA have their own grant award conditions that subrecipients must agree to adhere to. Subrecipients of any of the Victim Services Grants, which include the DOJ grants authorized under the Victims of Crime Act (VOCA) and U.S. Department of Health and Human Services grants authorized under the Family Violence Prevention and Services Act (FVPSA), must sign the Victim Services Grants Grant Award Conditions. Paragraph 7 of these Grant Award Conditions requires subrecipients to comply with the requirements of the "U.S. Civil Rights Act (42 U.S.C. 2000d and 29 U.S.C. 794³)," submit to the CDVSA all findings of discrimination, have a signed Certification of Compliance on File, and comply with the ADA. Also, paragraph 1 of the Grant Award Conditions requires subrecipients to abide by the CDVSA grant regulations contained at Alaska Admin. Code tit. 13, § 90, Alaska Admin. Code tit. 13, § 95, and Alaska Admin. Code tit. 2, § 45.010.

The CDVSA grant regulations contained at Alaska Admin. Code tit. 13, § 90 and Alaska Admin. Code tit. 13, § 95 contain several civil rights requirements. For example, Alaska Admin. Code tit. 13, § 90.080(e), under "Client policies, procedures and records," requires subrecipients to have individuals available to provide translation services to non-English-speaking clients, and Alaska Admin. Code tit. 13, § 90.080(f) requires subrecipients to make provisions for meeting the needs of clients with disabilities. Additionally, Alaska Admin. Code tit. 13, § 95.110, "Equal employment opportunity," requires subrecipients to comply with Alaska Stat. § 18.80.220, which makes it unlawful for an employer to discriminate in the terms and conditions of employment based on race, religion, color, national origin, age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood, or in retaliation for opposing a discriminatory action. Alaska Admin. Code tit. 13, § 95.110 also requires subrecipients to post notices setting out the equal employment opportunity provisions of Alaska Stat. § 18.80.220, and to state in employment solicitations that the subrecipient is an equal opportunity provider.

³ Please see footnote no. 2.

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Furthermore, Alaska Admin. Code tit. 13, § 95.120, "Civil rights of clients," states that subrecipients "shall comply fully with 42 U.S.C. 2000d (U.S. Civil Rights Act) and 29 U.S.C. 794," shall inform staff members of their obligations under these laws, and shall establish procedures for processing complaints alleging discrimination on the basis of sex, race, religion, color, national origin, age, physical disability, mental disability, marital status, change in marital status, pregnancy, or parenthood.

In addition, subrecipients who receive DOJ funding under VOCA must sign the VOCA Subgrantee Grant Award Conditions; paragraph 7 of these Conditions requires VOCA subrecipients to "[m]aintain civil rights information." Subrecipients under the DOJ-funded Violence Against Women Act (VAWA) STOP grant program also have a separate set of grant conditions to abide by; paragraph 3 of these grant conditions requires subrecipients to comply with all of the requirements of Alaska Admin. Code tit. 13, § 90 and Alaska Admin. Code tit. 13, § 95, which include the civil rights requirements discussed above. Additionally, paragraph 6 of the VAWA STOP Grant Award Conditions require grantees:

[t]o comply with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968 as amended 42USC3789(d) or Victims of Crime Act; Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973 as amended; Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28CFR Part 42, Subparts C,D,E, and G; and the Department of Justice regulations on disability discrimination, 28CFR Part 35 and Part 39.

Paragraph 7 of the STOP Grant Award Conditions also requires subrecipients to forward to the CDVSA any finding of discrimination against the subrecipient issued by a federal or state court or federal or state administrative agency on the grounds of race, color, religion, national origin, sex or disability.

None of the above-referenced grant documents that CDVSA subrecipients must sign mentions the DOJ's Equal Treatment Regulations contained at 28 C.F.R. pt. 38.

2. Onsite Visits and Other Monitoring Methods

In the DPS' response to the OCR's data request, the DPS did not provide any information on whether it engages in any onsite visits or other monitoring activities to ensure that its subrecipients are complying with applicable grant requirements. During the onsite visit, a GAO grants manager told the OCR that due in part to staff turnover, at the time of the OCR's data request the GAO had not conducted any onsite monitoring visits for the grants that the GAO

administers for at least three years. The grants manager noted that the GAO relies on quarterly progress reports and financial expenditure reports to monitor the compliance of its subrecipients. However, the GAO grants manager told OCR that GAO intends to start conducting monitoring visits of its subrecipients again, and that in June 2008 it began to conduct monitoring visits of subrecipients of the DOJ's Office of Community Oriented Policing Services (COPS Office) grant funds. Based on the OCR's discussions with the GAO grants manager, the OCR understands that the GAO does not currently have a monitoring visit checklist or any similar documentation to utilize during onsite visits.

As discussed in Section I.A.1 of this Compliance Review Report, the GAO's Grant Agreement requires subrecipients to forward any findings of discrimination against the subgrantee issued by a federal or state court or federal or state administrative agency to the DPS for submission to the OCR. This assists the GAO in ensuring that its subrecipients are meeting the obligation to submit findings of discrimination to the OCR. Also as discussed in Section I.A.1, the GAO notifies subrecipients in the Grant Agreement that they must submit an EEOP, if required, directly to the OCR; however, it does not appear that subrecipients are also required to submit a copy of the EEOP to DPS so that the DPS can monitor its subrecipients' compliance with the DOJ's EEOP regulations at 28 C.F.R. §§ 42.301-.308. The GAO does provide subrecipients with a Certification Form to submit to the DPS if the subrecipient is claiming an exemption from the EEOP submission requirement.

As for the subawards funded through the CDVSA, while the seven-member CDVSA governing board makes the actual funding decisions, the CDVSA is supported by CDVSA staff members who are responsible for administering and monitoring the subawards. During the OCR's onsite visit, a CDVSA grant program specialist told the OCR that CDVSA staff does conduct onsite monitoring visits of its subrecipients. The grant program specialist explained that CDVSA staff conducts one onsite monitoring visit during a subrecipient's two-year grant award period, and that these monitoring visits generally last three days and include interviews with the subrecipient's managers and program staff and a discussion of relevant regulations. The CDVSA grant manager provided the OCR with the Onsite Audit Checklists and Worksheets that CDVSA staff utilizes during onsite visits; this document demonstrates that CDVSA staff reviews with subrecipients the relevant grant award conditions along with pertinent sections of the Alaska Administrative Code, including the Equal Employment Opportunity requirements contained at Alaska Admin. Code tit. 13, § 95.110, the requirements regarding civil rights of clients at Alaska Admin. Code tit. 13, § 95.120, and the requirements to provide services to non-English speaking individuals and handicapped clients at Alaska Admin. Code tit. 13, § 90.080.⁴ As part of this review, CDVSA staff monitors whether the subrecipient has posted an EEOP notice and has

⁴The OCR discusses the specific requirements contained in Alaska Admin. Code tit. 13, §§ 95.110, 95.120, and 90.080 in Section I.A.1 of this Compliance Review Report.

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established procedures for processing discrimination complaints as required by Alaska Admin. Code tit. 13, § 95.110 and Alaska Admin. Code tit. 13, § 95.120, respectively.

Additionally, the CDVSA grant program specialist provided the OCR with a copy of the Victim Services Program On-Site Review Checklist, which indicates that CDVSA staff reviews any complaints that have been filed with Victim Services Program subrecipients. The CDVSA grant program specialist told the OCR that during the CDVSA's onsite interviews with subrecipient program staff, the CDVSA asks program staff if they are aware of who in the agency is responsible for receiving discrimination complaints.

In addition to monitoring visits, the CDVSA staff monitors subrecipients through the subrecipients' submission of quarterly performance reports. During the OCR's onsite visit, the CDVSA grant program specialist stated that all subrecipients are required in the quarterly performance report to list any complaints of discrimination that the subrecipient received from employees or beneficiaries. The grant program specialist provided the OCR with a copy of the quarterly performance report that subrecipients under Victim Services Programs are required to complete; question 17 requires the subrecipient to list any formal complaints and/or grievances that the subrecipient received from clients, staff, and the general public, and to discuss the status of each complaint. As discussed in Section I.A.1 of this Compliance Review Report, the grant award conditions for the VAWA STOP grant program and the Victim Service Grants programs require subrecipients to submit findings of discrimination to the CDVSA.

3. Training and Technical Assistance

In its data response, the DPS said that it does not currently conduct any training or technical assistance programs for subrecipients regarding their duties to comply with applicable federal civil rights laws. During the OCR's onsite visit, the grants manager from the GAO told the OCR that the GAO does not conduct any type of training for its subrecipients on grant conditions or requirements. The grant program specialist from the CDVSA said that CDVSA staff conducts periodic teleconferences with subrecipients to discuss current or new grant requirements, but that so far none of these teleconferences has addressed civil rights requirements. As discussed in Section I.A.2 of this Compliance Review Report, CDVSA staff does discuss civil rights requirements with subrecipients during onsite monitoring visits.

4. Complaint Procedures

The State of Alaska, through the Alaska State Commission for Human Rights, has procedures in place to respond to complaints of discrimination from employees, applicants of employment, and beneficiaries of the DPS. These procedures also appear to cover complaints from employees of subrecipients, and may also encompass complaints from beneficiaries of subrecipients. The Alaska State Commission for Human Rights is responsible for enforcing the Alaska Human

Rights Law, Alaska Stat. § 18.80, which prohibits discrimination in *employment, places of public accommodation*, sale or rental of real property, financing and credit, and *practices by the state* on the basis of race, religion, color, national origin, sex, physical or mental disability, age, marital status, changes in marital status, pregnancy, and parenthood. In its data response and during the OCR's onsite visit, the DPS told the OCR that if an employee or beneficiary of a DPS subrecipient wished to bring a discrimination complaint against the subrecipient, the employee or beneficiary could file a complaint with the Alaska State Commission for Human Rights; it appears that employment practices by DPS subrecipients are covered by Alaska Stat. § 18.80, and that a program or activity of a subrecipient may qualify as a place of public accommodation depending on the nature of the subrecipient and the services that it offers. Direct beneficiaries and employees of the DPS also have the option of filing a complaint with the Alaska Office of the Ombudsman, which investigates complaints against state agencies.

The DPS further said in its data response that the DPS' Commissioner's Office is available to accept and investigate discrimination complaints from employees or beneficiaries of subrecipients; however, the DPS does not have any written policies or procedures in place to accept complaints against subrecipients. For example, if a beneficiary of a subrecipient wanted to file a complaint alleging discrimination by the subrecipient on the basis of religion, the DPS does not have procedures in place to accept, investigate, or issue findings for such a complaint.

As discussed in Sections I.A.2 and I.A.3 of this Compliance Review Report, pursuant to the CDVSA regulations at Alaska Admin. Code tit. 13, § 95.120, CDVSA subrecipients are required to establish procedures for processing complaints alleging discrimination on the basis of sex, race, religion, color, national origin, age, physical disability, mental disability, marital status, changes in marital status, pregnancy, or parenthood. Subsequent to the OCR's onsite visit, the CDVSA grant program specialist with whom OCR spoke stated that these procedures must address complaints received from both employees and beneficiaries of the subrecipient. Also as discussed in Section I.A.3 of this Compliance Review Report, during the CDVSA's onsite monitoring visits of subrecipients the CDVSA staff checks to make sure that each subrecipient has developed the required complaint procedures. Subrecipients of grants administered by the GAO are not required to establish procedures for processing discrimination complaints from employees or beneficiaries, and it does not appear that the GAO provides any guidance to its subrecipients on how they should handle discrimination complaints from employees or beneficiaries.

During the onsite visit, the grants manager from the GAO and the grant program specialist from the CDVSA said that they are not aware of an employee or beneficiary ever filing a complaint with a subrecipient. Subsequent to the OCR's onsite visit, the CDVSA grant program specialist told the OCR that if the CDVSA should discover that an employee or beneficiary filed a discrimination complaint with a subrecipient, CDVSA staff would monitor the subrecipient to ensure that it was processing the complaint in accordance with the subrecipient's policies and

procedures and with state and federal law. The grant program specialist stated that the CDVSA would not intervene unless the subrecipient did not resolve the complaint at the program level.

B. Monitoring Compliance with Faith-Based Regulations

The purpose of the Equal Treatment Regulations is to ensure that A[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 DPS' equitable treatment of faith-based organizations, the Compliance Review focuses 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

In its data response, the DPS said that it has not undertaken any specific procedures to ensure that faith-based organizations are neither being favored nor discriminated against in the DPS' funding process. During the OCR's onsite visit, a GAO grant manager told the OCR that almost all of the subawards that the GAO administers are targeted to current grantees, and that when funding opportunities arise the GAO sends out an email to current grantees to solicit applications. The GAO grant manager explained that since the subawards are not competitive, the GAO does not publish a Request for Grant Proposals (RFP) to solicit applications from the general public. Once the GAO receives applications from the targeted applicants, the GAO forwards the applications to the appropriate DPS program staff to make the funding decisions; the GAO grants manager told the OCR that the GAO may provide input to assist the program staff in making funding decisions.

According to a grant program specialist from the CDVSA, with the exception of the DOJ-funded Grants to Encourage Arrest Policies and Enforcement of Protection Orders (Arrest Program) and Rural Domestic Violence, Dating Violence, Sexual Assault and Stalking Assistance Program (Rural Program), the CDVSA advertises funding opportunities by publishing a RFP on the State of Alaska website (www.state.ak.us) and on CDVSA's website (www.dps.state.ak.us). Additionally, the CDVSA sends out an email to prior applicants notifying them of the current funding opportunity. Once CDVSA staff receives the applications, the staff forwards them to the seven-member CDVSA for review and funding determination. In addition, for the DOJ-funded STOP grants, grant applications are reviewed by a Proposal Evaluation Committee (PEC), which is comprised of three CDVSA members, two CDVSA staff members, a GAO grants manager,

and several external parties; the PEC reviews the applications and makes funding recommendations to the full seven-member CDVSA.

As for the CDVSA's Arrest Program and Rural Program, these grant programs are not competitive but rather are targeted to current subrecipients. The CDVSA sends out a notification to each current subrecipient inquiring whether the subrecipient is interested in participating in the grant program that year; if so, the subrecipient receives a subaward.

In responding to the OCR's data request for information on the DPS' funding of faith-based organizations in fiscal years (FY) 2006 and 2007, the DPS reported that no faith-based organizations applied for DOJ funding in FY 2006, and that one faith-based organization applied for DOJ funding in FY 2007 but did not receive funding. Specifically, the DPS said that Catholic Social Services applied for funding in FY 2007 under the STOP program, but that the CDVSA did not award funding to Catholic Social Services because its grant proposal was for services that other organizations were already sufficiently providing in the Anchorage area. The Catholic Social Services also applied for funding in FY 2007 through the CDVSA's general request for proposal process, but the DPS explained that CDVSA did not select the Catholic Social Services for funding because the CDVSA did not have the money to fund a new program in Anchorage without seeing some added value to the domestic violence clientele in that area.

During the OCR's onsite visit, the GAO and CDVSA grant managers with whom the OCR spoke said that the DPS identifies an organization as being a faith-based organization based on the name or title of the organization. The grant managers said that they are not aware of any other faith-based organization applying for DOJ funding in FYs 2006, 2007, or 2008.

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

Other than the general procedures that the DPS uses to monitor the civil rights compliance of its subrecipients, as discussed in Section I.A.2 of this Compliance Review Report, the DPS stated in its data response that it does not have procedures in place for ensuring that any funded faith-based organizations comply with the Equal Treatment Regulations and other applicable federal civil rights laws. During the OCR's onsite visit, the CDVSA grant program specialist with whom OCR spoke said that subrecipients generally describe their recent grant-funded programs and activities on their quarterly progress reports, and that CDVSA staff could determine from these quarterly reports whether a subrecipient appeared to be in compliance with the Equal Treatment Regulations.

In its data response, the DPS said that the CDVSA has historically required nonprofit organizations to obtain federal tax exempt status under 26 U.S.C. § 501(c)(3) to be eligible for CDVSA funding. This requirement is contained in paragraph 11 of the Assurances document

that all CDVSA subrecipients must sign before receiving grant funding. During the OCR's onsite visit, the CDVSA grant program specialist told the OCR that 501(c)(3) status is not required under state law, but that the CDVSA has always required this of nonprofit applicants. The GAO does not impose a similar requirement on its subrecipients.

II. Recommendations

The DPS, particularly the CDVSA, already has in place a number of procedures for monitoring the civil rights compliance of its subrecipients. To strengthen the DPS' monitoring efforts, the OCR offers the following six recommendations: (1) develop comprehensive procedures for receiving, investigating, and resolving complaints alleging discrimination in the delivery of services; (2) add a citation referring to DOJ's Equal Treatment Regulations to all of its grant assurances, agreements, and conditions; (3) modify and standardize the civil rights/nondiscrimination provisions in all of its grant assurances, agreements, and conditions; (4) conduct onsite monitoring visits of all subrecipients and use federal civil rights laws compliance checklists; (5) provide training to subrecipients on their obligations to comply with federal civil rights laws; and (6) allow subrecipients to demonstrate nonprofit status by any of the means identified in the DOJ's Equal Treatment Regulations.

A. Develop Comprehensive Complaint Procedures

Supplementing the complaint procedures of the Alaska State Commission for Human Rights and the Alaska Office of the Ombudsman, the DPS should develop internal complaint procedures for responding to allegations of discrimination from its own program beneficiaries and from employees and beneficiaries of subrecipients. Depending on whether a subrecipient qualifies as a place of public accommodation, the complaint procedures of the Alaska State Commission for Human Rights may not encompass complaints by beneficiaries of subrecipients; also, the Alaska Office of the Ombudsman does not have jurisdiction over complaints against subrecipients. At a minimum, the DPS should have a policy that explains to its employees the DPS' responsibility under federal law to treat all allegations of discrimination by employees and beneficiaries of both the DPS and DPS subrecipients seriously, that aggrieved parties have the right to file administrative complaints with the OCR, and that DPS employees are required to promptly forward to the OCR any complaints of discrimination from employees or beneficiaries of DPS and DPS subrecipients. 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. Developing comprehensive complaint procedures should be a top priority for the DPS.

B. Add a Citation Referring to the Faith-Based Regulations to all of DPS' Grant Assurances, Agreements, and Conditions

The DPS should modify the nondiscrimination/civil rights provisions contained in the grant assurances, agreements, and conditions that govern subrecipients to include a reference to the DOJ's Equal Treatment Regulations, 28 C.F.R. pt. 38. Subrecipients that receive funding from DOJ components need to be aware of the obligation to comply with these regulations.

C. Modify and Standardize the Civil Rights/Nondiscrimination Provisions in all DPS Grant Assurances, Agreements, and Conditions

The DPS should develop a standard provision listing all of the federal civil rights laws that the OCR enforces and that subrecipients are required to comply with, and should insert this provision in all of its current grant assurances, agreements, and conditions. This provision should reference all of the federal laws and citations that are currently listed in paragraph 6 of the GAO's Standard Assurances, along with the DOJ's Equal Treatment Regulations at 28 C.F.R. pt. 38, as discussed above. The DPS may also wish to add a sentence 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. The DPS should then incorporate this standard language into all of the GAO and CDVSA grant assurances, agreements, and conditions discussed in Section I.A.1 of this Compliance Review Report, replacing current provisions that do not reference all of the applicable civil rights laws or do not include the proper legal citation. For example, the DPS should insert this standard language into paragraph 6 of the GAO's Standard Assurances, Article XI of the GAO's Grant Agreement, paragraph 1 of the CDVSA's Assurances, paragraph 7 of the Victim Services Grants Grant Award Conditions, and paragraph 6 of the VAWA STOP Grant Award Conditions.

In addition, the DPS may wish to ensure that all of its grant assurances, agreements, and conditions contain the following provisions: that the subrecipient agrees to forward to the DPS for submission to the OCR any finding of discrimination against the subrecipient by a federal or state court or federal or state administrative agency on the grounds of race, color, religion, national origin, or sex; that subrecipients agree to formulate and forward an EEO to the DPS and OCR, as required; and that subrecipients will provide meaningful access to their programs and activities to individuals who are LEP. These important requirements are already referenced in Article XI of the GAO's Grant Agreement and in several of the CDVSA's grant documents; the DPS should ensure that all of its subrecipients are aware of these requirements.

D. Conduct Onsite Monitoring of all Subrecipients and Use Federal Civil Rights Laws Compliance Checklists

As part of its responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the GAO should follow through with its stated intention of conducting onsite monitoring visits of its subrecipients, similar to the CDVSA. The CDVSA has an Onsite Audit Checklist that it utilizes during onsite monitoring visits; this checklist contains a section

monitoring for compliance with the CDVSA civil rights regulation at Alaska Admin. Code tit. 13, § 95.120. Pursuant to this section of the checklist, CDVSA staff must evaluate whether a subrecipient's program fully complies with 42 U.S.C. § 2000d and 29 U.S.C. § 794, including the posting of required civil rights notices, and whether the subrecipient has written procedures for processing complaints alleging discrimination on the basis of sex, race, religion, color, national origin, age, physical disability, mental disability, marital status, change in marital status, pregnancy, or parenthood. Additionally, other sections of the Onsite Audit Checklist monitor for compliance with state requirements pertaining to equal employment opportunities, services to non-English-speaking clients, and meeting the needs of handicapped clients. However, this checklist does not monitor for compliance with all of the federal civil rights laws that the OCR enforces. Therefore, the GAO and CDVSA should develop and utilize a Federal Civil Rights Laws Compliance Checklist that evaluates 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 DPS or the OCR, whether the subrecipient has developed a language assistance plan describing how it will provide services to LEP individuals, whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act, or 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). Additionally, the DPS should be sure to include questions on this checklist to evaluate 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.

E. Provide Training to Subrecipients on Their Obligations to Comply with Federal Civil Rights Laws

The DPS does not currently provide any training for its subrecipients about their civil rights obligations. To ensure that subrecipients are aware of 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 report any complaints of discrimination to the OCR, the DPS should provide periodic training programs for its subrecipients on the applicable federal civil rights laws. The DPS should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the DPS provides the training in person, during a teleconference, or through other means. The OCR is available to provide the DPS with technical assistance in developing civil rights training programs.

F. Allow Subrecipients to Demonstrate Nonprofit Status by Any of the Means Identified in DOJ's Equal Treatment Regulations

John D. Glass, Acting Commissioner
Alaska Department of Public Safety
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As discussed in Section I.B.2 of this Compliance Review Report, the CDVSA requires nonprofit organizations to obtain federal tax exempt status under 26 U.S.C. § 501(c)(3) to be eligible for CDVSA funding, although a CDVSA grant program specialist noted that she does not believe that this is required under state law. Unless 501(c)(3) status is required under the particular grant program (e.g., programs funded under the federal Juvenile Justice and Delinquency Prevention Act), the CDVSA and GAO should be mindful that applicants can also demonstrate nonprofit status by any of the following means identified in the DOJ's Equal Treatment Regulations: (1) proof that the Internal Revenue Service recognizes the organization as being tax exempt under 501(c)(3) of the Internal Revenue Code; (2) a statement from a state taxing body or state secretary of state certifying that the organization is a nonprofit organization and that no part of the organization's net earnings may benefit any private shareholder or individual; (3) a certified copy of a certificate of incorporation or similar document establishing nonprofit status; and (4) any of the above, if it applies to a state or national parent organization, with a statement by the state or national parent organization that the applicant is a local nonprofit affiliate. 28 C.F.R. § 38.1(g).

Conclusion

Except for the concerns we have raised in Section II of this Compliance Review Report, we find that the DPS is in substantial compliance with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the DPS in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible DPS official contact Attorney Advisor Shelley Langguth or Attorney Advisor Christopher Zubowicz 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. Langguth at (202) 305-2353 or Mr. Zubowicz at (202) 305-9012.

Sincerely,
/s/
Michael L. Alston
Director

cc: Sherry Hassell
Grants Manager, Grants Administration Office

Lauree Morton
Grant Writer/Program Specialist, Council on Domestic Violence and Sexual Assault