



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

April 21, 2014

VIA E-MAIL AND CERTIFIED MAIL

Emery Gainey
Division Director
Division of Victim Services and
Criminal Justice Programs
Florida Department of Legal Affairs
The Capitol, PL-01
Tallahassee, FL 32399-1050

Re: Compliance Review of Fla. Dep't of Legal Affairs (13-OCR-0308)

Dear Mr. Gainey:

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is responsible for ensuring that recipients of federal financial assistance from the Office of Community Oriented Policing Services, the Office on Violence Against Women (OVW), the OJP, and OJP components comply with federal civil rights laws. As you know, recipients of federal financial assistance have an obligation not to discriminate against protected classes of people either in employment or in the delivery of services.

In carrying out the OCR's civil rights enforcement responsibilities, the OCR is conducting a broad compliance review of all state administering agencies (SAA) in accordance with federal regulation 28 C.F.R. § 42.206. The focus of this review is to determine both compliance with applicable federal civil rights laws and SAA monitoring procedures for ensuring the compliance of subrecipients with these laws. As part of that review, the OCR is evaluating the Florida Department of Legal Affairs (DLA or Department). Of particular interest to the OCR is the DLA's compliance with the federal regulations that the DOJ issued in January of 2004, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38. The regulations advise SAAs not to discriminate either in favor of or against faith-based organizations. The regulations also instruct funded faith-based organizations not to discriminate in the delivery of services or benefits based on religion or to use federal funds for inherently religious activities.

On August 27, 2013, the OCR conducted an onsite visit with the DLA in Tallahassee, Florida, to interview management and program staff; we also provided a training program for DLA representatives about the OCR and the federal civil rights laws that the OCR enforces, how the OCR enforces civil rights laws, a recipient's obligations to provide services to limited English

proficient (LEP) individuals, civil rights laws that affect faith-based organizations, and effective ways to monitor subrecipient compliance with applicable civil rights obligations. The OCR would like to thank your personnel for assisting the DOJ during its onsite visit.

In regard to the limited scope of this Compliance Review, the OCR concludes that the DLA is not fully in compliance with the requirements of the federal civil rights laws that the OCR enforces. Specifically, we have reservations about the adequacy of the Department's (1) guidance to subrecipients about their legal obligations regarding applicable federal civil rights laws, (2) monitoring of subgrantee compliance with their civil rights duties, (3) civil rights training for subrecipients, (4) complaint procedures for responding to certain discrimination allegations, and (5) efforts to make subawards to nonprofit organizations that may not be tax exempt under 501(c)(3) of the Internal Revenue Code. The following Compliance Review Report includes recommendations for improving the DLA's methods for monitoring the civil rights compliance of subrecipients and ensuring compliance with its federal civil rights obligations.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines the DLA's procedures for monitoring whether subrecipients are meeting their obligations to comply with the federal civil rights laws that are a condition for receiving federal financial assistance. The Report then focuses on the Department's implementation of the DOJ's Equal Treatment Regulations.

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

Recipients of federal financial assistance from the OJP are responsible for certifying that contractors and subrecipients under DOJ grant programs comply with applicable federal civil rights laws. In reviewing the DLA's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR evaluates how the Department uses 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 employment and services discrimination.

1. Standard Assurances

In this subsection, the OCR examines the standard assurances that the DLA uses in connection with its administration of the Victim Assistance Formula Grant Program, which is authorized by the Victims of Crime Act of 1984 (VOCA). As a condition of receiving VOCA funds from the DLA, an organization must sign a grant agreement that contains the following language on civil

rights compliance:

Recipients of federal financial assistance must comply with applicable federal civil rights laws, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); The Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); and Exec. Order 13279 (67 Fed. Reg. 241).

Pursuant to applicable federal laws and Section 760, F.S. (2012), the Provider agrees not to discriminate against any client or employee in the performance of this contract or against any applicant for employment because of age, race, religion, color, disability, national origin, marital status or sex. The Provider further assures that all contractors, subcontractors, sub-grantees, or others with whom it arranges to provide services or benefits to clients or employees in connection with any of its programs and activities are not discriminating against those clients or employees because of age, race, religion, color, disability, national origin, marital status or sex.¹

Each grant agreement also incorporates by reference the following standard assurances prohibiting discrimination:

The applicant also specifically assures and certifies that:

* * *

It will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); The Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); and the Age Discrimination Act of 1975 (42 U.S.C. § 6101-07); *see* Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).²

¹ 2013/2014 Agreement Between the State of Florida Office of the Attorney General and Florida Coalition Against Domestic Violence, Inc., Grant No. V13283 (July 30, 2013).

² *Id.* at Attachment B.

The DLA also requires applicants to sign the OCR's Equal Employment Opportunity Program Certification, although the version used by the Department is outdated.

2. Onsite Visits and Other Monitoring Methods

The DLA monitors approximately 235 VOCA-funded subrecipients through desk reviews and site visits. Each month, DLA grant managers conduct desk reviews of each subrecipient that evaluate compliance with several grant requirements, although none that relate to civil rights obligations. The Department conducts site visits on a four-year schedule. To conduct each year's scheduled onsite monitoring, which it aims to complete by June 30 of each year, the Department primarily relies on grant managers, regional victim advocates, and external entities like the Florida Coalition Against Domestic Violence (Coalition).³ As part of this site visit process, a subgrantee completes a self-evaluation form that asks whether it was involved in any litigation matter or administrative investigation, initiated by an employee or a services beneficiary, that related to a civil rights complaint. Once completed, the subgrantee submits the form to the DLA for its review. During site visits, the DLA's monitors use a checklist to evaluate whether subrecipient services are accessible to persons with disabilities.⁴ After a site visit, the Department's monitors evaluate the materials provided by the subgrantee, prepare a written report memorializing their findings, develop a monitoring corrective action plan to resolve any identified deficiencies, and ensure that the subgrantee implements the remedial measures described in that plan.

3. Training and Technical Assistance

As of the date of the OCR's site visit, the DLA did not provide training or technical assistance to its subrecipients on the civil rights obligations that apply to the receipt of federal financial assistance from the DOJ.

4. Complaint Procedures

In reviewing complaint procedures, the OCR evaluates those processes that are in place for individuals to pursue complaints of employment and services discrimination against the DLA, as well as complaints of employment and services discrimination against its DOJ-funded subrecipients. The Department clearly recognizes its broad obligation as both a recipient of federal financial assistance and an SAA to have in place policies on responding to discrimination complaints that it receives alleging prohibited discrimination in its employment and certain services practices. In its Policy and Procedure Manual, the DLA issued a policy on

³ The grant managers evaluate subrecipient compliance with the financial, programmatic, and performance requirements of a subgrant, while the regional victim advocates primarily focus on a subrecipient's provision of services to crime victims.

⁴ The Coalition routinely provides feedback to the DLA on this checklist.

discrimination and harassment that includes the following important elements:

- it designates a coordinator who is responsible for overseeing the complaint process;⁵
- it notifies DLA employees of prohibited employment discrimination, the procedures for filing discrimination complaints, and the policy and procedures for handling discrimination complaints;⁶
- it establishes written procedures for receiving discrimination complaints from DLA employees and beneficiaries;⁷ and
- it explains how the DLA investigates each complaint internally.⁸

While this policy contains several notable complaint protocols, it focuses on employment discrimination complaints involving DLA employees and does not sufficiently emphasize the importance of providing services and benefits to individuals in a nondiscriminatory manner.

Even though the DLA lacks a robust policy for handling services discrimination complaints, it does make an effort to respond to disability-based discrimination complaints from the public. On its Web site, the Department encourages members of the public to report to the Florida Office of the Inspector General any concerns that the Department denied access to services based on a person's disability.⁹ It also explains that an individual can file a disability complaint with the Florida Office of Citizen Services.

In monitoring subrecipients, the CJPA does not evaluate whether subrecipients have policies, procedures, or protocols regarding the handling of employment or services discrimination complaints they receive. The Agency also does not determine if subgrantees provide any notification to their employees and beneficiaries about subrecipient processes for handling discrimination complaints or available avenues for filing civil rights complaints. The DLA also lacks policies, procedures, or protocols for handling employment or services discrimination complaints that it may receive involving a subrecipient.

⁵ Office of the Attorney General Policy and Procedures Manual § 2-1.5 (designating the director of Human Resources as the coordinator for employment discrimination complaints and designating the DLA's Inspector General as the coordinator for services discrimination complaints).

⁶ *Id.* §§ 2-1.1, 2-1.2, 2-1.3, 2-1.4, 2-1.5, 2-1.6, 2-1.7, 2-1.11, 2-1.12.

⁷ *Id.* § 2-1.5.

⁸ *Id.* § 2-1.6.

⁹ In describing this complaint process, the DLA cites two DOJ regulations implementing Title II of the Americans with Disabilities Act of 1990.

B. Monitoring Compliance with Faith-Based Regulations

The purpose of the Equal Treatment Regulations is to ensure that “[r]eligious organizations are eligible, on the same basis as any other organization, to participate in any [Justice] Department program for which they are otherwise eligible.”¹⁰ The Regulations prohibit the DOJ and DOJ-funded recipients from discriminating either for or against an organization on the basis of the organization’s religious character or affiliation. *Id.* In evaluating the DLA’s equitable treatment of faith-based organizations, the Compliance Review Report 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

a. Selecting DOJ-Funded Subrecipients

Each year, the DLA publishes a notice in the *Florida Administrative Weekly* announcing the anticipated availability of VOCA Victim Assistance funds. The Department posts this information on its Web site and distributes it, by mail and e-mail, to hundreds of entities, including nonprofit organizations. These nonprofit groups include current subrecipients (several of which, as noted below, are faith-based organizations), victim services providers, rape crisis centers, centers for independent living, and legal aid groups, as well as any other nonprofit organization that wants to apply for funds. In disseminating information about the grant-application process, the DLA does not tailor any of its outreach efforts to possible applicants in the faith-based community.

In two places, the grant application includes content related to faith-based applicants. First, the application includes a question about whether an applicant is a faith-based organization. Second, as part of the DLA’s VOCA Application Checklist, the Department states that a nonprofit applicant must submit documentation of its tax-exempt status under 26 U.S.C. § 503.¹¹

Once the DLA receives grant applications, it undertakes a multi-step process to review submitted applications, select subrecipients, and determine the amounts of their subawards. Initially, Department grant managers utilize a technical review worksheet to evaluate whether each application satisfies the minimal requirements of the grant application process. Next, the Chief of the Bureau of Advocacy and Grants and the Division Director review these completed worksheets and prepare funding recommendations for the Attorney General’s review based on several factors, including the VOCA’s funding requirements, effective ways to support core victim services, the agency’s program priorities, and the unique funding needs of Florida’s

¹⁰ 28 C.F.R. § 38.1(a) (2013).

¹¹ In selecting subrecipients, the DLA uses a technical review worksheet that also considers whether a nonprofit applicant obtained tax exempt status from the Internal Revenue Service.

disparate geographic regions. Finally, after reviewing these recommendations, the Attorney General revises or approves them.

b. Faith-Based Organizations as Subrecipients

This section of the Report discusses the DLA's efforts to include faith-based organizations in the VOCA Victim Assistance program. During the DLA's 2011-2012 grant period, it provided subawards to five faith-based organizations; these subawards totaled \$381,291 and ranged in size from \$21,335 to \$147,921. During its 2012-2013 grant period, the Department provided subawards to the same five faith-based organizations that received funds during the prior year; these subawards totaled \$271,715 and ranged in size from \$21,335 to \$139,267.

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

The Equal Treatment Regulations circumscribe how faith-based subrecipients may use federal financial assistance. Specifically, such subgrantees may not engage in inherently religious activities with federal funds; nor can they discriminate against potential or actual program beneficiaries on the basis of religion or religious belief.¹² In administering its DOJ program funds, the DLA does not have a system in place to monitor whether its faith-based subrecipients provide services consistent with these restrictions.

II. Recommendations

To strengthen its civil rights monitoring efforts, the OCR concludes that the DLA should implement the following five recommendations: (1) modify the civil rights and nondiscrimination provisions in its grant agreement, (2) refine its monitoring protocols to include additional items regarding federal civil rights laws, (3) provide training to all subrecipients regarding their obligations to comply with federal civil rights laws, (4) develop comprehensive protocols for addressing discrimination complaints, and (5) allow subrecipients to demonstrate their nonprofit status by any of the means identified in the DOJ's Equal Treatment Regulations.¹³

¹² 28 C.F.R. § 38.2(b)(1), (d).

¹³ Most of these recommendations directly relate to the Methods of Administration that the DLA must implement as a condition of administering fiscal year 2014 funds as an SAA under the VOCA Victim Assistance program. *See* Grant Agreement Between Office for Victims of Crime and Florida Dep't of Legal Affairs, Award No. 2013-VA-GX-0022 (Oct. 1, 2012 – Sept. 30, 2016), Special Condition No. 24; Other Requirements for OJP Applications, http://www.ojp.usdoj.gov/funding/other_requirements.htm (last visited Mar. 11, 2014).

A. Modification of the Civil Rights/Nondiscrimination Provisions in Grant Agreement

We appreciate the DLA's efforts to notify VOCA-funded subrecipients of their nondiscrimination obligations. To strengthen this notice, the DLA should amend its grant agreement to include the following language or substantially similar language, which would apply to all applicants for and subrecipients of DOJ funding, regardless of the amount of federal financial assistance at issue: "In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the OCR and the Florida Department of Legal Affairs."¹⁴

The DLA may also consider including in its grant agreement the following language or substantially similar language regarding language assistance services:

As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Safe Streets Act and Title VI of the Civil Rights Act of 1964, subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to its programs and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing its budgets and in conducting its programs and activities. Additional assistance and information regarding your LEP obligations can be found at <http://www.lep.gov>.

The DLA may also wish to add a sentence to its grant agreement 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. Finally, to ensure that the DLA accurately communicates the OCR's EEOP requirements to applicants, it should begin to use the current version of the OCR's EEOP Certification Form, which is available at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>.

¹⁴ See 28 C.F.R. § 42.204(c). The OCR includes this sentence in Recommendation A in anticipation of the Office for Victims of Crime's (OVC) issuance of revised guidelines regarding the administration of the VOCA Victim Assistance Program. Under these guidelines, the OJP would implement VOCA's nondiscrimination provision "in accordance with 28 CFR part 42, and guidance from the Office for Civil Rights within the Office of Justice Programs." VOCA Victim Assistance Program, 78 Fed. Reg. 52,877, 52,887 (proposed Aug. 27, 2013) (to be codified at 28 C.F.R. pt. 94). Once the OVC issues the final version of this document, the DLA should include language in its subrecipient grant agreement that is substantially similar to our recommended language in Recommendation A on reporting findings of discrimination.

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B. Refine the DLA's Civil Rights Monitoring Protocol

The DLA should bolster its monitoring materials to ensure that it evaluates all of the various civil rights requirements that apply to its DOJ-funded subrecipients (e.g., whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act; whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act and Title IX of the Education Amendments of 1972; and whether the subrecipient is taking reasonable steps to provide meaningful access to programs and activities for LEP persons). This civil rights monitoring tool should also include questions that evaluate whether the subrecipient is complying with the 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. To assist the DLA in refining its monitoring materials, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, which is enclosed for the Department's review.

C. Provide Training to All Subrecipients Regarding Their Obligations to Comply with Federal Civil Rights Laws

The DLA should ensure, through periodic and mandatory training, that all subgrantees are aware of their obligations under applicable federal civil rights laws. The Department should provide this training at least once during a grant cycle, whether it provides the training in person, during a teleconference, or through other means. The OCR has developed training modules that explain a recipient's various civil rights obligations, and which are available at <http://www.ojp.usdoj.gov/about/ocr/assistance.htm>. The DLA may wish to incorporate these videos into its own subgrantee training program. The OCR is also available to provide the Department with additional technical assistance in developing its civil rights training program.

D. Develop Comprehensive Protocols for Addressing Discrimination Complaints

As previously noted, the DLA has a complaint policy that includes important safeguards for employment and certain services complaints involving its own practices. To strengthen the Department's interactions with its own employees and beneficiaries, the DLA should revise chapter two of its Policy and Procedures Manual to ensure that it:

- explains the prohibition against discrimination in the DLA's provision of services to individuals;
- explains how the DLA notifies its beneficiaries of prohibited discrimination in funded programs and activities, the procedures for filing discrimination complaints, and the policy and procedures for handling discrimination complaints; and

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- explains how the DLA notifies a complainant that he or she may file a discrimination complaint with the OCR.

The DLA also has an obligation as a recipient of federal financial assistance to have in place a policy addressing how it responds to employment and services discrimination complaints that it receives from subgrantee employees and beneficiaries. To that end, the Department should implement a policy that:

- designates a coordinator who is responsible for overseeing the complaint process;
- explains how the DLA notifies subrecipients of prohibited discrimination in funded programs and activities and the DLA's policy and procedures for handling discrimination complaints;
- establishes written procedures for receiving discrimination complaints from subgrantee employees and beneficiaries;
- explains that the DLA investigates each complaint internally or refers it to the appropriate agency, such as the EEOC or the OCR, for investigation and resolution;
- explains how the DLA trains appropriate program staff members on their responsibility to refer discrimination complaints or potential discrimination issues involving subrecipients to the Department's designated complaint coordinator for processing as soon as the alleged discrimination comes to their attention;
- explains how the DLA notifies the complainant that he or she may also file a complaint with the OCR;
- ensures that subrecipients have procedures in place for responding to discrimination complaints that employees and beneficiaries file directly with the subrecipient; and
- explains how the DLA ensures that subrecipients notify appropriate subrecipient employees and beneficiaries of prohibited discrimination in funded programs and activities and the procedures for filing a complaint of discrimination.

To assist the DLA in strengthening its complaint protocols, the OCR encloses discrimination complaint procedures that were adopted by several other SAAs. While the Department's adoption of these procedures would satisfy this recommendation, the OCR also recognizes that there may be other, equally effective procedures that accomplish the same objectives.

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

The DLA generally requires nonprofit organizations to obtain federal tax exempt status under 26 U.S.C. § 501(c)(3) to be eligible for Victim Assistance funding. But the VOCA does not require nonprofit organizations to obtain federal tax exempt status in order to receive these funds.

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 DLA should be mindful that applicants can 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; or (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.¹⁵ The DLA should revise its subgrant application materials to ensure that nonprofit organizations that are not exempt under the Internal Revenue Code but that do fall within one of the above categories are not penalized during the Department's subaward process.

III. Conclusion

We find that the DLA should implement the OCR's recommendations to ensure it is meeting its obligations under the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the Department in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible Department official contact Attorney Advisor Christopher Zubowicz to develop a timeline and goals for implementing the OCR's recommendations.**

¹⁵ 28 C.F.R. § 38.2(g).

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Thank you for your cooperation and assistance during the Compliance Review process. If you have any questions, please contact Mr. Zubowicz at 202.305.9012.

Sincerely,

/S/

Michael L. Alston

Director

Enclosures

cc: Christina F. Harris, Chief
Bureau of Advocacy and Grants
Florida Department of Legal Affairs (Via E-Mail)