



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail Receipt Requested

March 6, 2014

Mike DeWine
Ohio Attorney General
Ohio Office of the Attorney General
30 East Broad Street, 14th Floor
Columbus, OH 43215

Re: Compliance Review of Ohio Office of Atty. Gen. (13-OCR-221)
Compliance Review Report

Dear Attorney General DeWine:

On May 17, 2013, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) initiated a Compliance Review of the Ohio Office of the Attorney General (OOAG) under the implementing regulations of the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, 28 C.F.R. § 42.206 (2013).

The Compliance Review focused on (1) whether the OOAG was itself, as a State Administering Agency (SAA), in compliance with the federal civil rights laws that apply to recipients of federal financial assistance from the DOJ, and (2) whether the OOAG had effective methods of administration to ensure the compliance of its subrecipients with the same laws. Based on a review of the materials that the OOAG submitted in response to the OCR's Data Request, the OCR finds that the OOAG is meeting most of its obligations under the applicable federal civil rights laws, but the OCR offers recommendations that the OOAG should implement to bring it more fully into compliance with its federal civil rights obligations.

On November 21, 2013, the OCR provided the OOAG with a copy of the draft Compliance Review Report for review and comment. The OOAG requested, and the OCR granted, extensions of time to provide written feedback on the draft. On January 24, 2014, the OCR received a letter from Ms. Tannisha Bell, Section Chief, Crime Victims Section, OOAG, noting that for each of the topics that the Compliance Review addressed, the OOAG agreed not only with "the statement of fact regarding current practices" but also with "the noted comments and recommendations."

Compliance Review Report

The OCR's Compliance Review of the OOAG entailed conducting a desk audit of the OOAG's administrative practices related to its civil rights obligations as a recipient of DOJ financial assistance. The Compliance Review involved evaluating the following areas of the OOAG's operations: (1) notification of subrecipients of the applicable federal civil rights laws, (2) monitoring procedures for subrecipients to ensure their compliance with federal civil rights requirements, (3) procedures for responding to discrimination complaints, (4) training for staff and subrecipients on federal civil rights obligations, and (5) grant-making and administrative procedures affecting faith-based organizations (FBOs).

1. Notification of Subrecipients of the Applicable Federal Civil Rights Laws

a. OOAG's Practice

Section 6.2 in the 2013-2014 VOCA/SVAA [Victims of Crime Act/State Victims Assistance Academy] Application Guidelines and Assurances (OOAG Guidelines) that the OOAG submitted in response to the OCR's Data Request contains a well-formulated notice to subrecipients regarding their civil rights obligations:¹

As a condition for receiving funding from the Office of Justice Programs (OJP), recipients must comply with applicable federal civil rights laws, including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Justice Department's regulation for the Equal Treatment of Faith-Based Organizations. Depending on the funding source, a recipient must also comply with the nondiscrimination provisions within the applicable program statutes, which may include the Omnibus Crime Control and Safe Streets Act of 1968, the Victims of Crime Act, or the Juvenile Justice and Delinquency Prevention Act. Collectively, these federal laws prohibit a recipient of OJP funding from discriminating either in employment (subject to the exemption for certain faith-based organizations discussed below: see "Funding to Faith-based Organizations") or in the delivery of services or benefits on the basis of race,

¹ As noted in the OCR's letter to the OOAG of May 7, 2013, DOJ financial awards to the OOAG have included the following: FY 2010 Victim of Crime Act (VOCA) Victim Assistance Formula Grant, Grant No. 2010-VA-GX-0107 for \$14,772,893; FY 2010 VOCA Victim Compensation Formula Grant, Grant No. 2010-VC-GX-0012 for \$6,666,000; FY 2011 VOCA Victim Assistance Formula Grant, Grant No. 2011-VA-GX-0033 for \$15,285,114; FY 2011 VOCA Compensation Formula Grant, Grant No. 2011-VC-GX-0042 for 4,528,000; FY 12 VOCA Victim Assistance Formula Grant, Grant No. 2012-VA-GX-0043 for \$13,393,031; FY 2012 VOCA Victim Compensation Formula Grant, Grant No. 2012-VC-GX-0036 for \$3,393,000; Bureau of Justice Assistance's FY 2012 Enhanced Collaborative Model to Combat Human Trafficking Grant Program, Award No. 2012-VT-BX-K001 for \$492,026; the SMART Office's FY 2010 Support for Adam Walsh Act Implementation Grant Program, Grant No. 2012-AW-BX-0044 for \$269,842; the Office on Violence Against Women's FY 2010 Community-Defined Solutions to Violence Against Women Program, Grant No. 2010-WE-AX-0017 for \$174,355.

color, national origin, sex, religion, or disability. In addition, OJP recipients may not discriminate on the basis of age in the delivery of services.

Resp. 3.

Section 6.2 of the Guidelines also notifies subrecipients, consistent with DOJ's guidance, that Title VI of the Civil Rights Act of 1964 requires them to "take reasonable steps to ensure that persons with limited English proficiency (LEP) have meaningful access to funded programs or activities." *Id.*

Section 6.3 of the OOAG Guidelines also accurately states that SAAs should neither favor nor disfavor faith-based organizations (FBOs) in making funding decisions or administering grant programs. *Id.* Section 6.3 correctly explains permissible and impermissible practices of funded FBOs:

Executive Orders and regulations also prohibit recipient FBOs from using Justice Department funding to engage in inherently religious activities, such as proselytizing, scripture study, or worship. Funded FBOs may, of course, engage in inherently religious activities; however, these activities must be separate in time or location from the federally assisted program. Moreover, funded FBOs must not compel program beneficiaries to participate in inherently religious activities. Funded faith-based organizations must also not discriminate on the basis of religion in the delivery of services or benefits.

Id.

Significantly, despite the reference in Section 6.2 to guidance for FBOs on employment practices, neither Section 6.2 nor Section 6.3 explains that funded FBOs may have the option under certain circumstances to request an exemption from the express prohibition against religious discrimination in DOJ program statutes so that they may favor co-religionists in making hiring decisions.

The OOAG requires subrecipients to read the OOAG Guidelines and then sign a statement that it "will abide by rules of the grant." *Id.* (OOAG Guidelines at 13).

The OOAG Guidelines also contain an Assurances document that states that an applicant for financial assistance must certify that it will comply with applicable federal civil rights laws. Paragraph eleven in the Assurances states as follows:

[The applicant assures and certifies that it will] . . . [c]omply and assure the compliance of all its subgrantees and contactors, with the applicable provisions of the Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate); 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, 28 CFR Part 42, Subparts C, D, E, and G, and Department of Justice regulations on disability discrimination 28 CFR Part 35 and 39.

Id. (OOAG Guidelines sec. 8.11).

Section 8.3 in the Assurances restates that a subrecipient is to comply with the nondiscrimination and equal employment opportunity policies in 28 C.F.R. pt. 42; and Section 8.14 in the Assurances states that a subrecipient is to “[f]orward a copy of any findings of discrimination made by a Federal or State court or Federal or State administrative agency after a due process hearing to the U.S. Office of Civil Rights Compliance and CVS [Crime Victim Services].” *Id.* at 17.

Sections 8.19 to 8.22 in the Assurances also state that an applicant for financial assistance will take the following actions to comply with federal civil right laws, including the appointment of a civil rights coordinator and, if required, the development of an Equal Employment Opportunity Plan (EEOP):

19. Provide the name of a civil rights contact person who has lead responsibility for ensuring that all applicable civil rights requirements are met. The person shall act as a liaison in civil rights matters with the U.S. Office of Civil Rights Compliance.
20. Provide an Equal Employment Opportunity Plan if required to maintain one.
21. Provide an assurance that the program will comply with all applicable nondiscrimination requirements.
22. Provide an assurance that, in the event a federal or state court or federal or state administration agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, national origin, sex, age, or handicap against the program, the program will forward a copy of the finding to the U.S. Office of Civil Rights Compliance.

Id. (OOAG Guidelines, sec. 8.19-.22).

The reference to the U.S. Office of Civil Rights Compliance in Sections 8.14, 8.19, and 8.22 is long outdated.

Section 8.20 is accurate, but subrecipients may not understand their obligations vis-à-vis the EEOP regulations. The OCR did not see in the materials that the OOAG submitted guidance to subrecipients on producing, maintaining on file, or submitting an EEOP.

Section 8.22, restating the obligation in Section 8.14, expands the DOJ regulatory requirement to report findings of discrimination that are the result of a due-process hearing to the OCR by adding the protected classes of handicap (i.e., disability) and age. The applicable regulation, 28 C.F.R. § 42.204(c), states that the recipients subject to the nondiscrimination requirements in the Safe Streets Act must submit to the OCR findings of discrimination resulting from a due-process hearing on the basis of race, color, national origin, religion, or sex.

Section 8.25 in the Assurances instructs subrecipients that there are additional protected classes that apply to providing services to beneficiaries who are crime victims:

The recipient organization must demonstrate an ability to serve all crime victims. Procedures or policies that exclude victims from receiving safe shelter, advocacy services, counseling, and other assistance based on their actual or perceived sex, age, immigration status, race, religion, sexual orientation, gender identity, mental health condition, physical health condition, criminal record, work in the sex industry, or the age and/or sex of their children may be cause to interrupt, suspend, discontinue, or disqualify an organization from receiving a funding award.

Id. at 16.

The OCR finds the list of protected classes in Section 8.25 of the Assurances puzzling. Some of the listed classes are clearly protected under federal statutes, such as race, sex, religion, disability (including “mental health condition, physical health condition”) and age (including “age . . . of their [beneficiaries’] children”). The list omits the federally protected classes of color and national origin. *See, e.g.*, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2006). The list also adds protected classes that no federal civil rights laws at this time recognize, such as immigration status, history of a criminal record,² and work in the sex industry.

The list of protected classes in Section 8.25 also mistakenly includes language from the nondiscrimination grant condition in the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. No. 113-4, § 3(b)(4), 127 Stat. 54, 61-62 (codified at 42 U.S.C. § 13925(b)(13)) (amending the Violence Against Women Act of 1994). In addition to the protected classes already recognized by federal cross-cutting statutes (i.e., race, color, national origin, sex, disability, and age), VAWA 2013 adds the protected classes of “actual or perceived” sexual orientation and gender identity. The prohibition against discrimination based on sexual orientation and gender identity applies only to

² Having a history of a criminal record is not a federally protected class; however, under certain circumstances in the context of employment, a subrecipient’s improper use of arrest and conviction records may result in unlawful discrimination based on race or national origin. *See* Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on the U.S. Equal Employment Opportunity Commission’s *Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (June 2013), available at http://www.ojp.usdoj.gov/about/ocr/pdfs/UseofConviction_Advisory.pdf.

organizations that receive federal financial assistance subject to VAWA 2013 in FY 2014. According to the financial records available to the OCR, the OOAG does not currently fall into this category. Therefore, no federal law, at least at this time, prohibits discrimination based on actual or perceived sexual orientation or gender identity in the DOJ-funded programs that the OOAG administers.

b. Comments and Recommendations

Through its grant documents for subrecipients, the OOAG has, for the most part, done a commendable job in notifying grant applicants of the civil rights laws and obligations that accompany receipt of financial assistance from the DOJ. Section 6.1 of the OOAG Guidelines is accurate. The OOAG should consider, however, adding citations to all the listed federal laws as a way to help subrecipients identify the governing statutes.

The OOAG should also add a section, or expand Section 6.3, to discuss the option that FBOs may have to request, on a case-by-case-basis, an exemption from the program statutes' prohibition against employment discrimination based on religion so that funded FBOs may hire, under certain circumstances, co-religionists. *See* Office of Justice Programs, Other Requirements for OJP Applications, Funding for Faith-Based Organizations, http://www.ojp.usdoj.gov/funding/other_requirements.htm (last visited Nov. 13, 2013).

To adhere more closely with Executive Order 13559, the OOAG should consider making a slight revision to the second paragraph in Section 6.3, deleting the term "inherently religious" and substituting the term "explicitly religious." Exec. Order No. 13,559, 75 Fed. Reg. 71,319, 71,320 (Nov. 17, 2010).

In Section 8.11 of the Assurances, the OOAG should add a reference to the DOJ regulation that pertains to funded FBOs, the Equal Treatment for Faith-Based Organizations (Equal Treatment Regulation), 28 C.F.R. pt. 38. In the same paragraph, there is no need to cite Subtitle A before Title II of the Americans with Disabilities Act. The OOAG should also include a reference to the implementing regulations for Title IX of the Education Amendments of 1972, 28 C.F.R. pt. 54. Again, OCR encourages adding the legal citations to each of the listed statutes.

In Sections 8.14, 8.19, and 8.22, the OOAG should delete the reference to the U.S. Office of Civil Rights Compliance and substitute the following: Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice.

In Section 8.14, and perhaps also in Section 8.22, the OOAG may want to add contact information for the OCR to facilitate subrecipients' compliance with the reporting requirement. The OCR's mailing address is 810 7th Street, NW; Washington, DC 20531. The OCR's electronic mailbox is askOCR@ojp.usdoj.gov.

In Section 8.22, the OOAG should limit the list of cited protected classes to the ones expressly stated in 28 C.F.R. § 42.204(c) (i.e., race, color, national origin, sex, and religion). The correct reference in Section 8.22 should be to a state administering agency rather than to a "state administration agency."

Although the statement in Section 8.22 regarding the obligation subrecipients have to provide an EEOP is accurate, as noted previously, the OCR did not find in the materials it received from the OOAG any instructions for subrecipients on how to meet this requirement. The OCR encourages the OOAG to direct subrecipients to the OCR's website for additional information on complying with the EEOP obligation. *See* Office of Justice Programs, Equal Employment Opportunity Plans, <http://www.ojp.usdoj.gov/about/ocr/eeop.htm> (last visited Nov. 13, 2013).

The OOAG should reconsider the list of protected classes that appears in Section 8.25. It should limit the list to the protected classes under the current applicable federal laws that protect beneficiaries based on race, color, national origin, sex, religion, disability, and age. If the OOAG is relying on state law to support the prohibitions listed in Section 8.25, it should provide the appropriate citations. If the OOAG receives funding subject to VAWA 2013 in FY 2014, it may then add the protected classes of actual or perceived sexual orientation and gender identity.

2. Civil Rights Monitoring Procedures for Subrecipients

a. OOAG's Practice

In response to the OCR's inquiry regarding the OOAG's monitoring procedures for subrecipients to ensure that they are in compliance with the applicable federal civil rights laws, the OOAG directed the OCR to examine Sections 6.2, 8.11, 8.13-14, 8.19-22, and 8.25 in the OOAG Guidelines. Resp. 4. The OOAG stated, "The applicant is required to sign the document and verify understanding and compliance with the provisions included in the aforementioned sections."

According to the OOAG, it conducts both desk reviews and onsite monitoring visits of subrecipients once every twenty-four months. Resp. 9 (citing OOAG Financial Policies and Procedures Fiscal Year 2012-2013 at 13). After each visit, the monitor assigns each subrecipient a risk category (i.e., low, medium, or high). The classification determines the type of monitoring that the OOAG will use over the next twenty-four months. For low risk subrecipients, the reviews will consist of 90% desk audits and 10% site visits; for medium risk subrecipients, half the reviews will be desk audits and half will be site visits; and for high risk subrecipients, the interim reviews will consist solely of site visits. *Id.* The form that the OOAG uses during a monitoring site visit for subrecipients includes four questions related to compliance with federal civil rights laws. Resp. 9 (VOCA/SVAA Grants Site Visit Form). The first question (i.e., Question 26) is "Is the building handicapped accessible?" The second question (i.e., Question 27) is "If applicable, is the program's EEOP on file or submitted to CVAP or the Office of Civil Rights? If yes, please state the location where the EEOP is filed." The third question (i.e., Question 28) is "Have there been any findings of discrimination? If so, have findings been submitted to

the Office of Civil Rights and the Ohio Attorney General’s Office/Crime Victim Section?” The fourth question (i.e., Question 29) is “Please describe how the program provides services to Limited English Proficient (LEP) victims (i.e., translator, culturally competent literature, etc.)”

It is not clear from the OOAG’s response how it uses the VOCA/SVAA Grants Site Visit Form as a monitoring tool; as the OOAG also included in its response to the OCR’s Data Request a copy of the sample Federal Civil Rights Compliance Checklist that the OCR has posted on its website. Resp. 5; *see also* Office of Justice Programs, Office for Civil Rights, Federal Civil Rights Checklist, <http://www.ojp.usdoj.gov/about/ocr/pdfs/Civil%20Rights%20Compliance%20Checklist.pdf> (last visited Nov. 13, 2013). Does one form supplement the other? Are both forms used to monitor all subrecipients?

It is also unclear how thoroughly the OOAG actually monitors the compliance of subrecipients with some of their civil rights obligations. Even though the OOAG produced a copy of the OCR’s sample Federal Civil Rights Compliance Checklist as a monitoring tool—having apparently downloaded the form from the OCR’s website, the OOAG provided no information on how it uses this document in evaluating subrecipients. For example, the sample Federal Civil Rights Checklist contains a question (i.e., Question 3) that asks subrecipients how they notify program beneficiaries about the applicable civil rights laws; yet despite the information that one would expect that the OOAG would have gathered in response to this question, the OOAG acknowledges that it does not track information about whether subrecipients provide their beneficiaries with information on how to file a discrimination complaint. *Compare* Resp. 5 *with* Resp. 15.

b. Comments and Recommendations

The OCR recognizes that the OOAG has procedures for monitoring subrecipients’ compliance with the applicable federal civil rights laws; however, the OCR has concerns about the thoroughness of the monitoring process. There is a significant discrepancy between the VOCA/SVAA Grants Site Visit Form and the sample Federal Civil Rights Compliance Checklist. If it does not already do so, the OCR recommends that the OOAG use the more expansive Federal Civil Rights Compliance Checklist in monitoring the compliance of all subrecipients. The OCR also recommends that the OOAG’s monitoring of subrecipients include an inquiry into whether a subrecipient’s employees and beneficiaries receive notice that they have the right to file a discrimination complaint directly with the OCR.

3. Procedures for Responding to Discrimination Complaints

a. OOAG’s Practice

The OOAG noted that it has procedures for addressing discrimination complaints from employees, citing the OOAG’s Policies and Procedures Manual and sending the OCR the applicable sections. Resp.

12. The OOAG provided, however, no relevant information on its process for handling discrimination complaints either from its own beneficiaries (if it should have any) or from the employees or beneficiaries of subrecipients.

b. Comments and Recommendations

The OOAG should develop procedures for handling complaints not only from its own program beneficiaries but also from the program beneficiaries and employees of subrecipients. A model complaint policy is available on the OCR's website. *See* Office of Justice Programs, Office for Civil Rights, Procedures for Responding to Discrimination Complaints from Clients, Customers, Program Participants, or Consumers of the [State Administering Agency] and the [State Administering Agency's] Subrecipients, <http://www.ojp.usdoj.gov/about/ocr/pdfs/Services%20Complaint%20Procedures.pdf> (last visited Nov. 13, 2013).

4. Training for Staff and Subrecipients on Federal Civil Rights Obligations

a. OOAG's Practice

The OOAG states that it conducts on an annual basis regional training programs for staff and subrecipients on their obligations related to federal civil rights laws. In 2013, the OOAG provided regional trainings on April 19, 21, 26, 28, and May 2. The OOAG noted that the OCR conducted training on civil rights issues for subrecipients on April 19, 2013. The OCR had agreed to provide similar training at the other scheduled regional meetings, but federal budget constraints forced the OCR to cancel its participation in the training programs.

The OOAG submitted to the OCR slides from training presentations on civil rights compliance issues that both the OCR and the OOAG produced.

The OOAG included on one of its training slides, entitled "A word from the Department of Justice" the full quotation from Section 8.25 from the Assurances in the OOAG Guidelines.

b. Comments and Recommendations

The OCR acknowledges the work that the OOAG has taken to provide training to staff and subrecipients on the civil rights obligations that accompany receipt of financial assistance from the DOJ. The OCR regrets that it was unable to support the technical assistance efforts of the OOAG by providing presentations at all the regional conferences for subrecipients that the OOAG held in 2013.

The OCR recommends that the OOAG revise the slide that quotes Section 8.25 of the OOAG Guidelines to respond to the concerns that the OCR raised in its previous discussion of Section 8.25. *See infra* Part 1. As the OOAG correctly noted in Section 8.11 of the Assurances, federal law, as it applies to OOAG

subrecipients that receive DOJ financial assistance, prohibits discrimination both in employment and in the delivery of services or benefits on the basis of race, color, national origin, sex, religion, or disability. Also consistent with OOAG's statement in Section 8.11, federal law prohibits discrimination on the basis of age in the delivery of services or benefits in all federally assisted programs.

5. Grant-Making and Administrative Procedures Affecting FBOs

a. OOAG's Practice

The OOAG notifies eligible applicants, including FBOs, of the availability of DOJ financial assistance by posting an announcement on its website. Resp. 17. Also, the section chief of the Crime Victims Services Section sends a letter to program partners, notifying them of the application process for funding under DOJ programs. *Id.* The OOAG Guidelines state that "religiously affiliated organizations" are eligible for funding. *Id.* (OOAG Guidelines sec. 3). The OOAG Guidelines state that a nonprofit organization must have an Internal Revenue Service (IRS) Determination Letter attesting to its Section 501(c)(3) status under the federal Internal Revenue Code. *Id.* (OOAG Guidelines sec. 3.1 (Private Non-Profit Agencies)).

The OOAG provided the OCR with a detailed explanation of the grant-review process that ensures an independent, objective evaluation of the applications that the OOAG receives for funding under the DOJ grant programs that the OOAG administers. Resp. 18. The OOAG also submitted a Proposal Review Form, which it uses for evaluating grant applications. *Id.* The form evaluates each application based on the following criteria: proposal submission, eligibility, programmatic essays, program service summary, and proposed budget and narrative. *Id.*

In FY 2011, the OOAG identified ten FBOs³ that applied for financial assistance under VOCA-funded programs, and the OOAG funded all of them. Resp. 19. Moreover, the OOAG funded nine of the ten FBO subrecipients in FY 2011 at the full requested amount of financial assistance. *Id.* In FY 2012, the OOAG identified eleven FBOs that applied for financial assistance under VOCA-funded programs, and the OOAG funded all of them. Resp. 20. Again, the OOAG funded eight of the eleven FBO subrecipients in FY 2012 at the full requested amount of financial assistance. *Id.*

³ There is no definition for a FBO in 28 C.F.R. pt. 38. In reply to the OCR's Data Request, in which the OCR asked how the OOAG defines and identifies subrecipients as FBOs, the OOAG referred to Section 6.3 of the Assurances, which does not, however, contain any responsive information. Resp. 6. Notably, two of the ten subrecipients that the OOAG identified as FBOs in FY 2011 and three of the eleven subrecipients that the OOAG identified as FBOs in FY 2012 were organizations affiliated with the YWCA. Significantly, the YWCA does not identify itself as a FBO.

b. Comments and Recommendations

Given the OOAG's reported record in funding FBOs in FY 2011 and FY 2012, and in the absence of any evidence that FBOs are being either favored or disfavored in the OOAG's grant-making process or its administration of subawards, the OCR has no basis for questioning the OOAG's practice in treating FBOs equitably.

There is no evidence, however, aside from the OCR's sample Federal Civil Rights Compliance Checklist (i.e., Question 11) that the OOAG submitted to the OCR (*see* Resp. 5), that indicates that the OOAG monitors subrecipients, including FBOs, to determine whether they are refraining from using federal resources to engage in explicitly religious activities. The OCR recommends that the OOAG, if it is not doing so already, use Question 11 in the sample Federal Civil Rights Compliance Checklist as a point of reference in assessing whether a subrecipient is in compliance with the Equal Treatment Regulation.

The OOAG should review the eligibility requirements in Section 3.1 of the OOAG Guidelines, which requires nonprofit organizations to obtain an IRS Determination Letter certifying to their Section 501(c)(3) status. The Equal Treatment Regulation states that in general, nonprofit organizations, including FBOs, do not need to obtain Section 501(c)(3) status to be eligible for DOJ financial assistance. *See* 28 C.F.R. § 38.1(g), .2(g).

6. Complying with the Methods of Administration Special Condition

A special condition applicable to some DOJ grant programs, including awards under the Victims of Crime Act of 1984, requires SAAs, such as the OOAG, to provide the OCR with a written statement, known as Methods of Administration (MOA), which describes the procedures that the SAA has adopted to ensure the compliance of subrecipients with their federal civil rights obligations. The language of the special condition is as follows:

The recipient understands and agrees that it has a responsibility to monitor its subrecipients' compliance with applicable federal civil rights laws. The recipient agrees to submit written Methods of Administration (MOA) for ensuring subrecipients' compliance to the OJP's Office for Civil Rights at CivilRightsMOA@usdoj.gov within 90 days of receiving the grant award, and to make supporting documentation available for review upon request by OJP or any other authorized persons. The required elements of the MOA are set forth at http://www.ojp.usdoj.gov/funding/other_requirements.htm, under the heading, "Civil Rights Compliance Specific to State Administering Agencies."

By participating in this Compliance Review, and incorporating into its operations the recommendations contained in this Compliance Review Report, the OOAG should find it relatively easy to prepare the

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required MOA and then submit it separately to the OCR in fulfillment of its obligation under the special grant condition.

7. Findings and Next Steps

To come into full compliance with the applicable civil rights laws that apply to the OOAG as a recipient of DOJ financial assistance, the OOAG should implement the recommendations contained in this Compliance Review Report. Of particular concern to the OCR is the absence of discrimination complaint procedures not only for direct OOAG beneficiaries but also for the beneficiaries and employees of subrecipients. Ms. Bell's letter of January 24, 2014, contained an action plan, noting that the OOAG will implement all of the recommendations contained in the Compliance Review Report by April 15, 2014. The OCR accepts both the submitted action plan and the requested April 15, 2014, deadline. The OCR requests that the OOAG submit a report on or before April 15, 2014, documenting the implementation of the action plan. For technical assistance, please consult with Senior Counsel George J. Mazza. His direct telephone line is [redacted]; his e-mail address is [redacted].

The Compliance Review Report is a public document, and the OCR will post it on its website subject to minor redactions.

Sincerely,

/s/ Michael L. Alston

Michael L. Alston
Director

cc: Tannisha Bell, Section Chief
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