



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

May 15, 2012

Via Certified Mail: Return Receipt Requested

Mr. Joseph M. Watson, Executive Director
Louisiana Commission on Law Enforcement
and Administration of Criminal Justice
P.O. Box 3133
Baton Rouge, LA 70821-3133

Re: SAA Compliance Review Report on the Louisiana Commission on Law
Enforcement and Administration of Criminal Justice (08-OCR-0388)

Dear Executive Director Watson:

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 (SAA), including the Louisiana Commission on Law Enforcement and Administration of Criminal Justice (LCLE) in accordance with federal regulation 28 C.F.R. 42.206. The focus of the review was on the LCLE's compliance with applicable federal civil rights laws along with its monitoring procedures for ensuring that subrecipients are complying with these laws. Of particular interest to the OCR was the LCLE's implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations or ETR].

Based on the LCLE's responses to our data request and the information that the OCR gathered during our December 3, 2008, onsite visit, the OCR sent the LCLE a draft Compliance Review Report (Report) on December 13, 2011. In response to the draft Report, the LCLE sent the OCR a letter dated February 8, 2012, providing clarification regarding the number of local District offices that it operates. In accordance with this factual clarification, the OCR slightly revised our discussion of the LCLE's District offices on page 2 of this final Report. The LCLE also provided the OCR with information regarding actions that it has already taken or plans to take to implement the recommendations contained in the draft Report, including revising the language in its grant application kits and certified assurances. Please note that the OCR is not revising the substance of this final Report to reflect recent actions taken by the LCLE, as the final Report discusses the policies and procedures that the LCLE had in place at the time of our onsite visit. However, the OCR will thoroughly review the actions that the LCLE has already taken to

implement our recommendations and will provide technical assistance and feedback following the issuance of this final Compliance Review Report.

In regard to the limited scope of our review, based on information gathered at the time of our onsite visit, the OCR concludes that the LCLE is not yet fully compliant with the federal civil rights laws the OCR enforces. We have reservations about whether the LCLE 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 Report includes recommendations for improving the LCLE's methods for monitoring the civil rights compliance of subrecipients and developing complaint procedures to address discrimination complaints received from employees or beneficiaries of subrecipients to ensure compliance with applicable federal civil rights laws.

I. **Overview**

This Report first examines the LCLE'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 LCLE'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, the Office of Community Oriented Policing Services (COPS) and the Office on Violence Against Women (OVW) are responsible for certifying that contractors and subrecipients under DOJ grant programs comply with applicable federal civil rights laws. In reviewing the LCLE's general efforts to ensure subrecipients' compliance with civil rights obligations, the OCR examined how the LCLE 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 and Application Kit Language

The LCLE is responsible for administering grant awards from the following DOJ program offices: the Bureau of Justice Assistance (BJA), the Office on Violence Against Women (OVW), the Bureau of Justice Statistics (BJS), the Office for Victims of Crime (OVC), and the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

LCLE manages its grants both at the Central office (state level programs) and via eight (8) local District offices (most of which are units of local government or non-profit agencies) that represent the interests of each parish. There are two municipal District offices- one for Jefferson

Parish and one for the City of New Orleans. Each District reviews the funding applications and forwards them to the Priorities Committee of the LCLE for approval. Within each Grant program, there is an Advisory Board. The Advisory Board reviews the applications forwarded from the Priorities Committee and considers input from Applicants and District directors. The Advisory Board recommends Applicants to fund, and then forwards its recommendations to the full governor-appointed LCLE Commission for final approval.

To advertise grants, LCLE puts announcement for funding opportunities in local newspapers. LCLE puts applicants on notice two ways relative to the civil rights requirements incumbent on grantees. The first involves explanatory language in the grant solicitation called an Application Kit. A second method which LCLE uses to put its subrecipients on notice about civil rights requirements is through a document which subrecipients must return with the Application Kit, entitled Certified Assurances.

a. Application Kit Language

Here follows some language from various LCLE Application Kits.

1. The Byrne Memorial Justice Assistance Grant (JAG) Program Application Kit contains the following explanatory paragraph about Civil Rights:

No person in any state shall on the grounds of race, color, religion, national origin, sex or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under or denied employment in connection with any program or activity funded in whole or part with funds made available under this Act: Section 809(c) (1) of the Act. Recipients of funds under the Act are also subject to the provisions of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title II of the Americans with Disabilities Act of 1990; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C,D,E, and G and Department of Justice Regulations on Disability Discriminations 28 CFR Part 35 and 39.

2. The Victims of Crime Assistance (VOCA) Application Kit and the Juvenile Justice and Delinquency Prevention (JJDP) Title V Community Prevention Grants Program Application Kits do not contain any similar information about compliance with civil rights laws.

3. The VOCA Continuation Application, and the S.T.O.P. Violence against Women grants (VAWA) Application Kits contain the following language regarding Civil Rights obligations:

Language Proficiency: Applicants must certify that Limited English Proficiency persons have meaningful access to the services under the program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP).

To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. The U.S. Department of Justice has issued guidance to help them comply with Title VI requirements. The guidance document can be accessed on the internet at www.lep.gov.

Religiously Affiliated Programs: The applicant certifies that if the agency is affiliated with a religious program, services will be offered to all victims without regard to religious affiliations and that receipt of services is not contingent upon participation in a religious activity or event.

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

b. Certified Assurances

The following Grant Program Application Kits contain Certified Assurances: *JJDPA Title V*; *JJDPA Title II*; *Juvenile Accountability Block Grants*; *VOCA*; *VOCA Continuation Applications*; and *S.T.O.P. Violence Against Women* grants. Each Grant Program Application Kit has its own Certified Assurances and within each are a number of separate paragraphs that address federal civil rights laws. None of the Grant Programs contain each one of the necessary paragraphs. Here follows a compilation of language from the various Certified Assurances which LCLE publishes with suggestions for changes to the text highlighted in bold:

Discrimination Finding: The applicant assures that in the event that any federal or state court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, age, sexual orientation¹, or disability against a recipient of funds, the recipient will forward a copy of the findings to the Office for Civil Rights, OJP.²

¹ Please note that the Federal laws that OCR enforces do not include a prohibition against discrimination on the basis of sexual orientation. If there is a State of Louisiana statute that provides protection against sexual orientation

Equal Employment Opportunity Program: The applicant assures that if required to formulate an Equal Employment Opportunity Program (EEO) in accordance with 28 C.F.R. 42.301 et seq., Subpart E, compliance to the requirements will follow, and current EEO will be maintained on file according to applicable requirements.³

Equitable treatment: Pursuant to Section 223(a)(15) of the JJDP Act, the applicant assures that the youth in the juvenile justice system are treated equitably on the basis of gender, race, family income, and mentally, emotionally, or physically handicapping conditions.

Non-Discrimination: The applicant assures that he, and all his⁴ contractors, will comply with the non-discrimination requirements set forth in policies and regulations of the organizations and publications listed in Audit Requirements and Compliance with Policy; 42 U.S.C. 3789(d) and 12131-12134⁵; 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) of 1990; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and Department of Justice Non-Discrimination Regulation, 28 C.F.R. Parts 35, 39, and 42, Subparts C, D, E, and G, I and Part 54.

Equal Treatment for Faith-Based Organizations: The applicant certifies compliance with the Equal Treatment Regulations 28 C.F.R. Part 38 prohibits faith-based organizations from using financial assistance from the DOJ to fund inherently religious activities. While faith-based organizations can engage in non-funded inherently religious activities, they must be held separately from the DOJ funded program, and customers or beneficiaries cannot be compelled to participate in them. The regulation also makes clear that organizations participating in programs funded by the DOJ are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion.

discrimination, we recommend that LCLE request that such findings be sent to LCLE so that it can take appropriate action in those actions.

² We recommend that LCLE include its full address to which grantees should send such findings *in addition to* Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th St., N.W., Washington, D.C. 20531

³ Please note the full text of what should be included in the EEO requirement is contained in Attachment 1, OJP Standard Assurances and should be replicated in LCLE's grant documents. Further, LCLE should utilize an EEO Certification Form similar to the one attached to this Report for subgrantees' reporting requirements. *See* Attachment 2.

⁴ LCLE should consider changing male pronouns to gender-neutral language such as "it" and "its."

⁵ Please note this incorrect citation should be corrected to read: Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or Victims of Crime Act (as appropriate).

Discrimination Findings: recipients are directed to forward a copy of the findings to the Office of Civil Rights Compliance (OCRC) at the Office of Justice Programs⁶

2. Onsite Visits and Other Monitoring Methods

In response to OCR's data request, the LCLE stated it utilizes an "On Site Monitoring Review" form to monitor the compliance of its grant subrecipients. Any discrepancies are brought to the attention of the respective oversight board and then onto the Commission members of the LCLE for resolution.

The only civil rights-related question in the monitoring form is located under "Personnel" It states:

Is there a current EEOP on file? Subgrantees who receive more than \$25,000 in federal financial assistance must maintain an EEOP on file for possible OCR audit.

The OCR recommends adding additional queries and information such as contained in the Sample Monitoring Checklist created by OCR. *See* Attachment 3.

3. Training and Technical Assistance

The LCLE states that it routinely provides grant orientation workshops to the Commission members to familiarize them with federal rules and guidelines.

The LCLE also stated that it provides civil rights training to new grantees such as those that receive VAWA grants. Training is distributed in the form of a copy of a PowerPoint. The LCLE provided OCR with a copy of the PowerPoint presentation that it provides to its VAWA grantees. The presentation was a copy of OCR's standard civil rights training presentation which the LCLE VAWA grant manager had attended. That LCLE grant manager provided the subrecipient agencies that she managed with a copy of the OCR Power Point presentation. The other LCLE grant programs are managed by different LCLE grant managers who had not attended the OCR training. Therefore, subrecipients in those programs did NOT receive any civil rights training.

4. Complaint Procedures

The LCLE does not have any formal written procedures in place to address complaints from beneficiaries or employees of subrecipients. The LCLE reports that it is not aware of any

⁶The Office for Civil Rights (OCR) is the correct name of this Office. LCLE MUST INSERT its own address to ensure that Findings are submitted to LCLE. Findings may also be submitted to OCR at 810 7th St, NW, Washington, DC 20531

complaints that have been filed by any persons alleging discrimination in the delivery of services or employment matters relative to any subrecipient.

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.” 28 C.F.R. pt. 38.1(a). The Regulations prohibit the LCLE and LCLE-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 LCLE's treatment of faith-based organizations, this Compliance Review focuses on two issues: (1) the review process for making awards to applicant faith-based organizations (FBOs); and (2) procedures for ensuring that funded FBOs comply with applicable federal civil rights laws.

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

LCLE reports that FBOs are given the same opportunity to apply for funding as other non-FBO community-based organizations. Applications for all grants are advertised in local newspapers and LCLE has funded some faith-based organizations (FBO). As part of its grantmaking to both FBO and other community-based organizations, the LCLE indicated that it requires non-profit organizations to have tax-exempt status under section 501(c)(3) in order to obtain funding from DOJ programs.

A. Visit to Louisiana Methodist Home for Children

The OCR visited an LCLE-funded FBO in Ruston, LA, the Louisiana Methodist Home for Children (LMCH) which currently receives subawards from OVC and OJJDP. During the time of the LCLE and LMCH site visit, the only funding LMCH received was from the OVC grant program for a crime victims' counseling program, though personnel reported to OCR that it had previously received OJJDP funding for its Changing Attitudes and Behavior Program (a residential program for youth on the campus of LMCH). However, since the time of the OCR visit, LMCH has again received OJJDP subawards for programs on its campus.

In operating all of its programs, the LMCH must ensure that it abides by the nondiscrimination provisions both the OVC and the OJJDP statutes which prohibit discrimination on the basis of religion, as well as the requirements of the ETR which guide the activities of federally funded FBOs that provide services to beneficiaries. The ETR require that organizations receiving Federal funding ensure that their programs do not engage in inherently religious activities and that they provide services to all persons regardless of religious affiliation. The regulations require, further, that if the organization does conduct inherently religious activities such as worship, instruction, or proselytization, that it be done separate in time or location and that it be voluntary for beneficiaries. *See*, 28 C.F. R. §38.1(b) and (d).

The LMCH provides various programs to children and families throughout Louisiana at a number of different locations. Families can access services voluntarily for consultations, assessments, referrals, counseling, etc., on topics such as parenting, anger management, adolescent issues, communication skills, grief, and crisis. Primarily, LMCH provides residence, counseling, and education for troubled children and adolescents. LMCH describes its program as “provid[ing] assessment-based residential services... for children and teens who are unable to live at home.”⁷ LMCH takes referrals through various channels including the Louisiana Division of Youth Services (social services), the Louisiana Office of Juvenile Justice, (Office of Community Services), police departments (when children are in need of emergency shelter) and private applications. In 2007, the Division of Youth services referred 490 children, the Office of Community Services referred 683 children, police referred 83 children, and private sources referred 210. LMCH serves about 300 children per year, with 106 beds in its main Ruston facility.

LMCH describes its mission as “guiding children and families home to experience God’s love by following the teaching of Christ.”⁸ According to its informational literature, LMCH states “at no time do we ever promote denominational loyalties or a specific set of religious beliefs,” but also states that the “ultimate goal for each person is that he/she knows Christ intimately and that he/she will seek to make Him the center of his/her lives.”⁹ LMCH does not require its residents to participate in the Methodist services offered.

The LMCH operates a residential program and a crime victims counseling program on its Ruston campus. To learn more about the programs at the LMCH, the OCR toured the LMCH campus and interviewed staff in the programs.

- (1) Compliance with Equal Treatment Regulations
 - (a) Counseling Program

The LMCH operates a counseling center located on the campus of the LMCH and utilizes funding from LCLE from the OVC to provide counseling services to youth and families through LMCH’s Crime Victims Assistance (CVA) program and specifically, in its Child Abuse Counseling Program located on the campus of LMCH in its Family Counseling Center. Many DOJ OVC subgrants have been used to support the counseling program at LMCH. The LMCH indicated that the CVA Child Abuse Counseling Program and Trauma Recovery Program is separate from the residential program. About 50% of the CVA program participants are residents of the LCMH, with the other 50% coming from the local community comprised of both adults and children who have been victimized by crime. The CVA is supported in part by LCLE

⁷ Program Description, *available at* <http://www.lmch.org/admissions.php>.

⁸ Our Mission, Vision and Values Statement, *available at* <http://www.lmch.org/mission-vision-values.php>.

⁹ Spiritual Care pamphlet.

grant C07-1-010 (for a federal subaward of \$22,866 which was just finishing the end of its grant term), and C08-1-010 (for a federal subaward of \$20,796 which was just about to start). LMCH provided the majority of the support for these programs from other sources, and a small percentage of the program was funded by the DOJ OVC grants to support therapy, advocacy, referrals education and other direct services. The program also provides education and training to local direct care providers working with child abuse victims. The federal funding was used for 50-65% of the salary of a full-time therapist and a small amount for direct costs of the usage of the building and the LMCH campus facility.

LMCH has since received a DOJ OVC subaward for \$34,552, C82-8-010 to support another program in its Child Abuse Counseling Program called the “No More Secrets Program.” In the No More Secrets Program, the federal funding is used to provide support for two part-time therapists from LMCH to work in collaboration with local schools to identify victims of abuse and address trauma and victimization of children and to provide therapy and counseling services at the Family Counseling Center at LMCH. In reviewing the practices of the LMCH CVA program at the Family Counseling Center, the OCR interviewed therapists and toured the Family Counseling Center and the LMCH campus and programs operated by LMCH at the campus.

In interviewing the therapists in the CVA program, OCR learned that they utilize nonsectarian therapeutic practices that do not have any religious content or pedagogy. The counseling programs and all the services that the CVA programs provide are open to all persons regardless of religious belief or non-belief. The OCR reviewed intake forms and questionnaires and did not observe any impermissible questions that might limit the services to persons in violation of the anti-discrimination statutes or the ETR. The OCR was not able to interview any of the resident beneficiary children of the program due to client confidentiality concerns of the LMCH.

(b) Residential Program

Children who are residents of LMCH have the option to attend religion-focused activities, chapel on Sunday mornings and an after-school bible challenge program on Wednesdays. Other religion-related activities have included vacation bible school¹⁰ and a youth choir where children sing songs such as “Amazing Grace” and practice in the chapel.¹¹ LMCH provides numerous other non-religious activities including horseback riding, arts and crafts, cooking, baking, fitness, and various other social events during its residential program.

In its Residential Policies and Procedures, LMCH states :

2. Clients have the right to participate in religious services in accordance with their faith and cannot be forced to attend religious services. ...
12. Clients are not denied admission, segregated into programs or otherwise

¹⁰ “Vacation Bible School,” *Pathways* , Vol. 46, Summer 2008, at 10.

¹¹ Sonya Hawkins, “Make a Joyful Noise,” *Pathways*, Vol. 46, Summer 2008, at 7

subjected to discrimination on the basis of... religion....

13. Clients have the right to make complaints without fear of reprisal and to be informed about the grievance policy and procedures of the agency.¹²

The OCR interviewed the Reverend Mickey, who provides religious programming and services to youth at LMCH. Rev. Mickey explained that the staff works hard to keep the balance between their faith and providing social services because of their understanding that children need to be introduced to Christ by example rather than by pressure. Rev. Mickey admitted to OCR that most children attend the Wednesday sessions because they want to be amongst their friends. He recalled that one Jewish resident indicated to him that she attended the sessions because she wanted to be “normal” like her friends who attended the program. Rev. Mickey indicated that if a child chooses not to attend Chapel or the Wednesday sessions, they can remain in their dorms. He indicated that was rarely done by students, but if it were, he would visit with them to discuss any concerns.

(2) Antidiscrimination on the basis of religion under the Victims of Crime Act and Office of Juvenile Justice Delinquency Prevention Act

The VOCA and OJJDP statutes prohibit discrimination on the basis of religion in programs funded by those statutes from OVC or OJJDP with substantially identical language. Specifically, the prohibitions state:

“No person shall on the ground of race, color, religion, national origin, [handicap], or sex be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any program or activity [undertaking] funded in whole or in part with funds [sums] made available under this chapter.” 42 U.S.C. §3789d (incorporated by reference in OJJDP statute, 42 U.S.C. §5672) and VOCA statute, 42 U.S.C §10604.

Ensuring that a person does not suffer religious discrimination can take the form of ensuring that appropriate modifications to a program are implemented in order to meet the religious needs of a participant, and of course, by not denying participation in a program to any person of a particular religious belief, persuasion or non-belief. In interviewing Rev. Mickey, he indicated as examples of ensuring that modifications to the program were provided, that on one occasion a Catholic child wanted to go to confession and LMCH accommodated him and provide the child opportunity to make confession to a Catholic priest. In another instance, Rev. Mickey indicated that he tried to help an Islamic father and Christian son understand one another’s beliefs since they were having a difficult time communicating with each other.

(3) Conclusion about the LMCH program and compliance with the anti-discrimination of the VOCA and OJJDP Act and the ETR.

¹² Residential Policies and Procedures, Section 2.4 “Client Rights,” available at <http://172.16.1.20/policy/residential/24.php>.

(a) Counseling Program

Further, the OCR determines that the *CVA Counseling Program*, as observed by the OCR, is operating within the requirements of the ETR and the antidiscrimination provisions as outlined above in that the program is open to any beneficiary regardless of religious belief, and there is no inherently religious activity occurring in the CVA program.

(b) Residential Program

The LMCH appears to comply with the anti-discrimination provisions of the OJJDP and VOCA statutes in that LMCH does not bar admission to the LMCH to residents who ascribe to just one particular religious belief. In fact, LMCH indicated, some children have no particularly religious belief when they enter the program. Further, the LMCH appears to ensure that children who are not part of the Methodist faith, but have other faith traditions nevertheless receive modification to the program for their religious preferences in accord with the antidiscrimination provisions.

Though the ETR affords FBOs the right to engage in inherently religious activities, despite receiving Federal financial assistance, the inherently activities must be voluntary on the part of the teens, and must be held separately in time or location from the program funded with Federal funds.

To ensure compliance with the ETR if the LMCH residential programs are supported with federal funds, the LCLE should investigate a number of factors:

- (i) The LCLE must determine if any of the DOJ funds are used in support of the LMCH residential program. If DOJ funds support any residential program, such as the previously funded Changing Attitudes and Behavior program, the LMCH must examine some of the activities that occur as part of the residential program which can be deemed inherently religious activity (such as chapel services and bible studies described above).
- (ii) To ensure compliance with the ETR, the LCLE should determine whether the children who participate in the residential program have made a voluntary choice to enter the LMCH residential program. The age of the participants and their willingness and ability to make such a choice will need to be closely considered by LCLE when making this determination.
- (iii) Further, LCLE should evaluate whether the inherently religious activities can be separated in time or location from the funded program. LCLE might find the description of residential program for teens, and a court's review of such program, instructive on the issue of separation and voluntariness.¹³

¹³ *Teen Ranch v. Udow*, 479 F.3d 403, 410 (6th Cir. 2007).

(iv) The LCLE may wish to consider the Constitutional implications of non-voluntary State placement (if any) of youth in a facility with sectarian mission, purpose and activities enmeshed in its programs.

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

As discussed above, the LCLE submitted a copy of a VAWA Certified Assurance which references religiously-affiliated programs. Again, it states:

The applicant certifies that if the agency is affiliated with a religious program, services will be offered to all victims without regard to religious affiliations and that receipt of services is not contingent upon participation in a religious activity or event.

Also, the LCLE submitted another document entitled: Amended Standard- Religious Activities (for VAWA Grantees). The pertinent parts of this standard include:

Survivor-directed initiatives for religious activities shall not be prohibited but must not take place in common, community shelter, or in program areas when those areas are being utilized for program activities. Under no circumstances will the receipt of services be contingent on attendance at religious services or adherence to particular religious beliefs or practices. Federal grant funds cannot be used to support religious activities.

The LCLE has no other procedures or documents used to ensure that faith-based organizations comply with applicable Federal civil rights laws.

II. Recommendations

The LCLE has some procedures in place for educating some of its subrecipients about Federal civil rights obligations and for monitoring the civil rights compliance of its subrecipients. The procedures include: general grant training that it conducts every year in which certain grant programs such as the VAWA program, contain training on the civil rights obligations of recipients; an on-site monitoring form which contains one civil rights-related question and; references in some Grant Application Kits and their Certified Assurances to some of the nondiscrimination laws and civil rights-related regulatory requirements.

To strengthen the monitoring efforts of the LCLE, we offer the following recommendations: (1) develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints; (2) add uniform citations and summary statements referring to the faith-based regulations to all of the LCLE Standard Subgrant Conditions and Grant Application Kits; (3) allow non-profit agencies to demonstrate eligibility in ways other than 501(c)(3) tax exempt status; (4) include uniform references to all civil

rights/nondiscrimination provisions in all of the LCLE Standard Subgrant Conditions and Certified Assurances; (5) add questions regarding civil rights monitoring on the on-site monitoring form that LCLE uses; and (6) provide training to all subrecipients on their obligations to comply with Federal civil rights laws.

A. Develop Comprehensive Policy for Addressing Discrimination Complaints

The LCLE did not have any written procedures in place which address how to process complaints of discrimination from LCLE beneficiaries or for addressing discrimination complaints from employees or beneficiaries of LCLE subrecipients. Accordingly, the LCLE should adopt a policy for addressing discrimination complaints that includes at a minimum the following elements:

- 1) Designate a coordinator who is responsible for overseeing the complaint process;¹⁴
- 2) Notify employees of the LCLE, beneficiaries, and subrecipients of prohibited discrimination in funded programs and activities and the LCLE policy and procedures for handling discrimination complaints;¹⁵
- 3) establish written procedures for receiving discrimination complaints from the LCLE beneficiaries, and from subrecipient employees and beneficiaries;
- 4) refer each complaint to the appropriate agency for investigation and resolution, such as the EEOC; or referring the complaint to the OCR, which will review the complaint and work with the LCLE to resolve the complaint;
- 5) Notify the OCR in writing when the LCLE refers a discrimination complaint to another agency or when the LCLE investigates the complaint internally; and
- 6) Train LCLE program staff on their responsibility to refer discrimination complaints, or potential discrimination issues, to the LCLE complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

Information about the applicable laws, complaint forms, and the investigative process may be found at the OCR's website at www.ojp.usdoj.gov/ocr/crc. Developing a comprehensive policy for addressing discrimination complaints should be a top priority for the LCLE. To assist LCLE, we are attaching sample complaint policies for complaints from both employees and beneficiaries. *See* Attachment 4.

¹⁴ See 28 C.F.R. pt. 31.202 (a)(1)

¹⁵ *Id.* at 31.202 (b)(3)

B. Add a Citation Referring to the Faith-Based Regulations to the LCLE Standard Subgrant Conditions and Grant Application Guidelines

The LCLE should include a reference to Federal Faith-Based Regulation, 28 C.F.R. pt. 38 in all of its Certified Assurance. Subrecipients that receive funding from the Justice Department need to be aware of the obligation to comply with these regulations. Further, LCLE may wish to summarize the ETR obligations in its Application Kits and Certified Assurances with this or similar language:

The Equal Treatment Regulations prohibit grant-making entities from discriminating either in favor of or against faith-based-organizations in awarding federal financial assistance. It also prohibits organizations from engaging in inherently religious activities as part of the programs or services funded with direct federal financial assistance. If an organization conducts inherently religious activities the activities must be offered separately, in time or location, from the programs or services funded with direct Federal financial assistance. Participation in such inherently religious activities must be voluntary on the part of beneficiaries. The regulations also prohibit discrimination in their provision of services by organizations participating in programs funded by direct Federal financial assistance against program beneficiaries or prospective beneficiaries on the basis of religion or religious belief.¹⁶

C. Allow non-profit organizations to prove eligibility in ways other than 501(c)(3) tax-exempt status

Further, when making grants to nonprofit organizations, the LCLE practice of requiring tax exempt status is problematic. As the OCR explained during its civil rights training held for state and district office grant managers during the site visit, only one DOJ grant program requires that a non-profit organization have 501(c)(3) status - the OJJDP Title II grants. For all of the other DOJ funding programs, a non-profit organization can provide verification of its eligibility by providing 501-(c))(3) status or any of the following:

- (1) A statement from a state taxing body or State secretary of State that
 - a. The organization is a nonprofit organization operating within its state; and
 - b. No part of its net earnings may lawfully benefit any private shareholder or individual;
- (2) A certified copy of the applicant's certificate of incorporation or similar certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or
- (3) Any item described above if that item applies to a State or national parent organization together with a statement by the State or parent organization that the

¹⁶ In its response to the draft Report, the LCLE provided the OCR with language regarding the Equal Treatment Regulations that it has added to its Certified Assurances and grant Application Kits. The OCR will review this language and will provide the LCLE with feedback.

applicant is a local nonprofit affiliate.

See 28 C.F.R. § 38.1(g)(1)-(4)¹⁷

D. Include Reference to All Civil Rights/Nondiscrimination Provisions in the LCLE Standard Subgrant Conditions

The LCLE should include a full and accurate reference to all of the federal civil rights laws the OCR enforces and with which subrecipients are required to comply as noted previously in this Report. For your review, we are enclosing a copy of the OJP's Standard Assurances (*See Attachment 1*) that the OJP requires recipients to sign and to which they agree to abide. Paragraph 6 of the OJP Standard Assurance lists the full citations to civil rights laws that recipients are required to follow. We recommend the LCLE review and where necessary, edit all of the legal citations it currently uses in its Certified Assurance to comport with the legal citations noted in OJP's Standard Assurances. Further, the LCLE should include reference to *DOJ Regulation 28 CFR Part 54, the DOJ Title IX regulations*, in its listing of DOJ regulations to which subgrantees must comply. The OJP Standard Assurances are being updated to include this citation as well.

The LCLE may also wish to add a few sentences in its Certified Assurances and Application Kits 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.

Further, LCLE should include a statement similar to the following in its Application Kits:

The non-discrimination laws and provisions which prohibit discrimination on the basis of national origin include the requirement to provide meaningful access to Limited English Proficient persons in all Federally funded programs. Guidance on how to comply with these requirements has been issued by the U.S. Department of Justice and the Guidance and tips and tools for provision of services can be viewed at www.lep.gov.¹⁸

¹⁷ In its response to the draft Report, the LCLE discussed two ways by which it now allows applicants to demonstrate nonprofit status. The OCR will review this information to determine whether the LCLE is in compliance with 28 C.F.R. § 38.1(g)(1)-(4).

¹⁸ In its response to the draft Report, the LCLE provided the OCR with language that it has added to its Certified Assurances and Application Kits regarding the civil rights laws that the OCR enforces, including the suggested language regarding retaliation and providing services to individuals with limited English proficiency. The OCR will review this revised language and will provide any necessary feedback.

E. Monitor for Compliance with Federal Civil Rights Laws during Onsite Monitoring Visits

To assist the LCLE in strengthening its on-site monitoring procedures, please find enclosed a monitoring checklist which was developed by the OCR and addresses the applicable federal civil rights laws and requirements on which an SAA should monitor its subrecipients for compliance. The LCLE may wish to use this checklist or incorporate the questions into its own monitoring forms. *See Attachment 3.*

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

Other than a distribution of an older version of an OCR PowerPoint to VAWA grantees and a brief reference to civil rights laws during the Financial and Administrative training, the LCLE does not currently provide any training for its subrecipients regarding applicable civil rights obligations. To ensure subrecipients are aware of their obligations under federal civil rights laws, the LCLE should provide to each of its subrecipients under all its grants programs, periodic civil rights training on the applicable federal civil rights laws. OCR provided an updated Power Point training seminar to LCLE program managers during its site-visit, and at a minimum, LCLE should ensure that each subrecipients receives a copy of the newer OCR's Power Point presentation. The LCLE should also consider providing this mandatory training for every subrecipient at least once during a grant cycle, whether the LCLE provides the training in person, during a teleconference, or through other means.

III. Conclusion

Upon receipt of this Report, please contact OCR attorney Shelley Langguth at Shelley.Langguth2@usdoj.gov or (202) 305-2353 to confirm receipt and to discuss the actions that the LCLE has taken, or intends to take, to implement the OCR's recommendations contained in this Report. Please note that OCR Special Counsel Daphne Felten-Green is currently on a detail assignment and that Ms. Langguth is the new point of contact assigned to this review.

Thank you for your cooperation and the assistance of your staff throughout the compliance review process.

Sincerely,
/s/
Michael L. Alston
Director

Attachments (4)