



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

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*Washington, D.C. 20531*

**Via Certified Mail**

November 2, 2010

Lisa E. Brooks  
Director, Justice Grants Administration  
1350 Pennsylvania Avenue NW  
Washington, DC 20004

Re: Compliance Review Report for Justice Grants Administration  
Docket No. 08-OCR-0397

Dear Director Brooks:

On June 18, 2007, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) initiated a compliance review of all State Administering Agencies, including the Justice Grants Administration (JGA), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the JGA's compliance with applicable federal civil rights laws along with the JGA's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the JGA'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 ETRs].

On April 22, 2009, the OCR conducted an onsite visit to the offices of the JGA in Washington, D.C. to interview JGA administrators and to conduct a training program for JGA administrators and program staff on the federal civil rights laws that the OCR enforces. The OCR also met with the executive directors, program staff, and program beneficiaries of two faith-based subrecipients of the JGA: (1) Prisoner Outreach Ministry, whose Welcome Home Program has been awarded funds since October 1, 2008, through September 30, 2010; and (2) East of the River Clergy Police Community Partnership (ERCPCP), whose (i) Sustaining Capacity program received funding from October 1, 2007, through September 30, 2009; (ii) Woodland Terrace Project received funding from October 1, 2008, through September 30, 2009; (iii) In-School Suspension programs received funding from October 1, 2007, through September 30, 2008; (iv) Woodland

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Terrace Prevention has been awarded funds since October 1, 2009, through September 30, 2010; and (vi) Youth Incentive Program has been awarded funds since April 1, 2010, through September 30, 2010. The OCR would like to thank you and then-Director Josh Weber for assisting OCR attorney Kimberly Scheckner during the course of this review.

Based on the JGA's responses to our data request and the information that the OCR gathered during and subsequent to our onsite visit, the OCR sent the JGA a draft Compliance Review Report on October 1, 2010. In a letter dated October 29, 2010, the JGA responded with minor factual corrections to the OCR's draft Compliance Review Report that have been incorporated into this final Report. The JGA also informed the OCR that it has already taken steps to adopt several of the OCR's recommendations and has provided the OCR with revised documents; these documents are currently under review but we wish to take this opportunity to commend the JGA for its responsiveness.

In regard to the limited scope of our review, the OCR concludes that the JGA is not fully compliant with the federal civil rights laws that the OCR enforces because (i) the JGA has inadequate complaint procedures in place to respond to discrimination complaints from employees and beneficiaries of subrecipients; and (ii) the JGA is not sufficiently monitoring, training, and educating its subrecipients on applicable federal civil rights laws. The following Compliance Review Report includes recommendations for improving the JGA'S methods for monitoring the civil rights compliance of subrecipients. The OCR will issue a report regarding the federally-funded programs of the Prison Outreach Ministry and the East of the River Community Partnership under separate cover at a later date.

## **Compliance Review Report: Overview and Recommendations**

### **I. Overview**

This Compliance Review Report examines the JGA'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 JGA'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 JGA's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the JGA 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**

Grant administrators located within the JGA's offices are responsible for administering JGA grants, including DOJ subawards. Then-Director Weber informed the OCR during the onsite visit that at the time the JGA submitted its responses to the data request, the JGA was in the process of revising its standard assurances documents. Subsequent to the onsite visit, the JGA sent the OCR the JGA's template for its 2009 Request for Application (RFA), which contains attachments with the following certifications and assurances regarding civil rights laws that must be signed by subrecipients before the JGA releases DOJ funds:

## **IV. JGA, Funding, and RFA Background**

### **e. Non-discrimination in delivery of services and discrimination reporting<sup>1</sup>**

In accordance with the below listed applicable federal statutes as well as District non-discrimination requirements, grantees agree to not discriminate in their provision of services against any and all populations. In addition, grantees agree to notify JGA within 48 hours of any and all employee or beneficiary formal complaints of discrimination against their organization, and to more generally comply with all civil rights hiring and beneficiary service policies and procedures as identified in the below listed applicable statutes. Applicable statutes 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 Disability Act of 1990 (42 U.S.C. 12131-34); the Education Amendments of 1972 (20 U.S.C. 1681, 1683, 1685086); and the Age Discrimination Act of 1975 (42 U.S.C. 6101-07); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).

(2009 Request for Application, p. 7.) Subrecipients must also sign the JGA Sub-Grant Award Agreement, which contains the same language regarding civil rights as well as some additional language concerning Equal Employment Opportunity Plans (EEOs) and the reporting of formal findings of discrimination:

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<sup>1</sup> Although the title of this section is "Non-discrimination in delivery of services and discrimination reporting," there appears to be no language concerning subrecipients' obligation to report formal findings of discrimination by a federal or District court or administrative agency to the OCR.

## VIII. COMPLIANCE AND ASSURANCES

- a. In accordance with the below listed applicable federal statutes as well as District non-discrimination requirements, grantees agree to not discriminate in their provision of services against any and all protected populations. In addition, grantees agree to notify JGA within 48 hours of any and all employee or beneficiary formal complaints of discrimination against their organization, and to more generally comply with all civil rights hiring and beneficiary service policies and procedures as identified in the below listed applicable statutes. Applicable statutes 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, 1685086); and the Age Discrimination Act of 1975 (42 U.S.C. 6101-07); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).

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- d. Sub-grantee will have on file, a current Equal Employment Opportunity Program (EEO) plan in accordance with 28 CFR 42.301 et. seq.<sup>2</sup>

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- f. In the event a Federal or District court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against the grantee, the grantee must forward a copy of the finding to the OVS and the Office on Civil Rights, 810 7<sup>th</sup> St., NW, Washington, DC 20531.<sup>3</sup>

(JGA Sub-Grant Award Agreement, p. 5.)

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<sup>2</sup> Not all subrecipients are required by law to maintain an Equal Employment Opportunity Program. See 28 CFR Section 42.301, et. Seq., Subpart E. Subrecipients are not notified in the current version of the JGA's RFA and sub-grant award agreement that they must submit to the OCR either an EEO or the OJP's EEO Certification Form stating that they are eligible for a full or partial exemption from the EEO requirement. Subsequent to the onsite visit, however, the JGA began including this certification as an attachment to the application award notification letter that each subrecipient receives, along with the sub-grant award agreement, upon being approved for funding.

<sup>3</sup> This paragraph fails to include discrimination on the basis of disability among the findings of discrimination for which the OCR must be informed. Also, please be advised that the name of our office is the Office for Civil Rights.

Absent from the JGA's RFA and sub-grant award agreement is any reference to the ETRs' prohibition against expending federal funding on inherently religious activities and not discriminating based on religion in the delivery of services.

## **2. Onsite Visits and Other Monitoring Methods**

During the OCR's onsite visit, JGA administrators explained that the JGA monitors its subrecipients by requiring quarterly programmatic reports and by conducting annual onsite visits. The programmatic report seeks information concerning the implementation status of the program or project funded, including outcomes and performance measures identified in the grant proposal and award agreement. In regard to civil rights requirements, the report seeks information whether there have been any formal discrimination complaints lodged against the subrecipient within the past three years, including employment discrimination complaints and services discrimination complaints. (JGA Programmatic Reporting Requirements, p. 3.) The report also asks if there have been any requests for technical assistance, but not specifically related to the area of civil rights. Although the report seeks information about meeting programmatic requirements, there is no mention of meeting legal requirements under the applicable civil rights laws, including the requirements under the Equal Treatment Regulations.<sup>4</sup> Subsequent to the visit, the JGA provided the OCR with a newly revised "Site Visit Assessment Tool" that grant administrators use during onsite visits. The document seeks review of various grant documents, including:

- c. EEO plan, short form, or waiver certification form on file, as well as written procedures for addressing employee or service discrimination complaints + submitted filings to JGA/OCR of any findings.

(Site Visit Assessment Tool, p. 2.) According to the JGA's Policies and Procedures Manual, during the onsite visit, grant managers are expected to review "programmatic and financial outputs and outcomes to date." There is no mention in these policies, however, of subrecipients' obligations to abide by the civil rights laws. (JGA Policies and Procedures, V(e) Sub-Grantee Programmatic Monitoring and Expectations.) Likewise, the site monitoring tool does not ask for the contact information of the person responsible for submitting findings of discrimination to the OCR; it does not ask whether a federal or District court or administrative agency has issued a finding of discrimination against the subrecipient during the last three years on the grounds of race, color, national origin, age, sex, religion, or disability; nor does it reflect whether the subrecipient needs or has requested any training or technical assistance regarding its duties to comply with applicable civil rights laws.

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<sup>4</sup> Subsequent to the OCR's onsite visit, the JGA provided the OCR with a copy of the letter each subrecipient receives in advance of site monitoring visits, which details the purpose and parameters of the visit. Nothing in this document references monitoring for compliance with the applicable civil rights laws.

### **3. Training and Technical Assistance**

During the onsite visit, then-Director Weber confirmed that beyond a “kick-off” orientation that is provided to new recipients concerning general reporting requirements, the JGA does not have any formal programs in place for providing training for its staff or for subrecipients concerning the applicable civil rights laws.

Subsequent to the onsite visit, Director Brooks told the OCR that the JGA required all subgrantees to attend orientation and financial reporting webinars in FY 2009 and FY 2010. The trainings provided subrecipients with information on updated reporting requirements and new templates and forms to be used by all subrecipients, including an EEOP certification form. The trainings covered programmatic reports that tie accomplishments to the goals and objectives of the grant, time card reports for Recovery Act supported positions, and a financial grants workbook. Neither of these trainings, however, specifically addressed the applicable civil rights laws governing the receipt of federal funds.

In its data request response, the JGA stated that it has provided “Capacity Building Training” on an annual basis to any faith-based organization that wishes to attend. According to the response, the training has been organized through the Office of Partnerships and Grants Development and the Mayor’s Office of Religious Affairs, and has provided workshops for the faith-based community to identify and access funding opportunities and receive guidance on how to successfully navigate the grant-making process. Then-JGA director Weber could not confirm during the onsite visit whether these annual workshops have been given since 2007. Subsequent to the onsite visit, Director Brooks confirmed that the JGA does not currently provide this training and she was unaware of when the JGA last sponsored such a training.

### **4. Complaint Procedures**

As noted in Section I.A.2, subrecipients are required to alert the JGA in their quarterly reports whether there have been any formal discrimination complaints lodged against them within the past three years, including employment discrimination complaints and services discrimination complaints. Other than this provision in the JGA’s monitoring documents, the new JGA Director confirmed that the JGA does not have agency-level policies or procedures concerning complaints of discrimination by its own employees or the employees or beneficiaries of subrecipients; instead, JGA employees are directed to follow the procedures developed by the Office of Human Rights for all District of Columbia government employees.

Based on the OCR’s research, it appears that the District of Columbia Office of Human Rights (OHR) is charged with investigating complaints of discrimination based on the actual or perceived race, color, religion, national origin, sex, age, marital status, genetic information, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, status as a victim

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of an intrafamily offense, or place of residence or business of any individual in the areas of employment, housing, education, and public accommodations. In addition, the OHR handles the complaints of residents that cannot access DC government services in their own languages, i.e., complaints concerning language access. It appears that employees of JGA subrecipients and their beneficiaries who are not DC government employees may file a complaint directly with the OHR without exhausting in-house or agency grievance procedure. Likewise, it appears that in addition to filing discrimination complaints with the OHR directly, JGA employees may also file a charge of discrimination directly with the Equal Employment Opportunity Commission (EEOC).

Although it appears that most discrimination complaints filed with the OHR are settled or dismissed through mediation, further research by the OCR indicates that the District of Columbia Commission on Human Rights (CHR) adjudicates complaints of discrimination that have been found to have probable cause and have been certified by the OHR.

## **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. § 38.1(a). The Regulations prohibit the DOJ and DOJ funding recipients from discriminating either for or against an organization on the basis of the organization's religious character or affiliation. *Id.*

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

During the OCR's onsite visit, JGA administrators confirmed that the JGA administers the following DOJ grant programs: the Edward Byrne Memorial Justice Assistance Grant (JAG) Program; the Recovery Act Edward Byrne Memorial Justice Assistance Grant (JAG) Program; the Juvenile Justice and Delinquency Prevention Act (Title II and Title V), as well as Juvenile Accountability Block Grants (JABG) Program, Enforcing Underage Drinking Laws Block Grants Program, Residential Substance Abuse Treatment for State Prisoners (RSAT) Program, and the Coverdell Forensic Science Improvement Grant Program.

JGA administrators explained that to notify prospective applicants of funding availability, the JGA advertises a Notice of Funding Availability (NOFA) and Request for Application (RFA) on the JGA website, through the Office of Partnership and Grants Services and in the DC Register. The JGA also alerts government agencies, community-based organizations, and advocates of funding opportunities by circulating the NOFAs to these stakeholder groups directly. Director Brooks confirmed to the OCR that the JGA does not conduct targeted outreach to the faith-based community or to any other stakeholder group.

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According to the current JGA Policies and Procedures Manual, applications that meet the RFA and application criteria are reviewed and scored by an independent review panel.<sup>5</sup> Director Brooks informed the OCR that the panel includes community-based service providers, community-based advocates, researchers, consultants, technical assistance providers, and local and federal government officials including prosecutors, public defenders, juvenile justice officials, and representatives of the District agencies. The panel uses a scoring form that assesses the application against specific programmatic components and key criteria highlighted in each RFA. JGA grant managers and the review panel determine the highest rated applications for each RFA. The grant managers and JGA Director then review and provide scores for each application. Once all scores are tabulated, the JGA Director schedules meetings with each review panel to discuss the applications' strengths and weaknesses. Advisory recommendations are made to the JGA Director, who is charged with final decision-making authority. Although as mentioned in Section I.A.3, the JGA has in the past provided "Capacity Building" training to the faith-based community, there does not appear to have been any training on the Equal Treatment Regulations from the time that the JGA provided its data response to date. As discussed in Section I.A.1, although the JGA's RFA and sub-grant award agreement now contain assurances regarding the ETRs, nothing in either document places subrecipients on notice of the ETRs' prohibition against using federal funds for inherently religious activities and discriminating against beneficiaries in the provision of services.

According to the JGA's data request response, the JGA requires that all applicants prove tax exempt status under 26 U.S.C. § 501(c)(3) in order to receive funds from the JGA. During the onsite visit, then-Director Weber told the OCR that it was not so much a requirement as something that the JGA "would like to see." Subsequent to the onsite visit, you clarified that the JGA does not require that organizations obtain tax exempt status in order to be eligible for funding except where there may be a federal program requirement; you further represented that the JGA will amend the language in its Request for Application to make this clear.

Based on the JGA's data request response and the information that the OCR obtained during and subsequent to the onsite visit, the OCR understands that in fiscal year (FY) 2006, of three faith-based organizations that applied for DOJ funding, three received funding: (1) the ConquestHouse, Inc., Reintegration Ministries received a \$267,579 Justice Assistance Grant Program (JAG) grant for its Reintegration of Ex-offenders Project; (2) Reaching Inside for Self-Esteem received a \$175,000 Edward Byrne Jr. Memorial Grant Program (Byrne) grant for its Youth Crime Prevention Program; and (3) East of the River Police Community Partnership received (i) a \$250,000 Local Law Enforcement Block Grant Program grant for its Youth Crime Prevention, Intervention and Education Program; and (ii) a \$200,000 Byrne grant for its Benning Terrace Intervention and Prevention Project.

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<sup>5</sup> At the time of the onsite visit and to date, the JGA has not had a finalized policy in place outlining the solicitation and award processes. According to the JGA Director, this policy is slated to be finalized in the fall of 2010.

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In FY 2007, of four faith-based organizations that applied for federal funding, only East of the River Clergy Police Community Partnership received a Title V grant in the amount of \$95,000 for its In-School Suspension and Truancy Program at Ballou High School.

In FY 2008, only East of the River Clergy Police Community Partnership received awards: (i) a \$150,000 JAG award for its Sustaining Capacity project; and (ii) a \$90,000 Title V award for its In-School Suspension Program.

In FY 2009, the following two faith-based organizations applied for and received funding: (1) East of the River Clergy Police Community Partnership received a \$115,924 JAG grant for its Woodland Terrace Project; and (2) Prisoner Outreach Ministry received a \$108,000 JAG grant for its Welcome Home Program.

During the onsite visit, JGA grant administrators stated that from FY 2006 to the present, they were unaware of any issues that arose regarding compliance with the Equal Treatment Regulations for any of the above-referenced grants.

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

As discussed in Section I.A.1 of this Report, the JGA's newly revised RFAs and sub-grant award agreement now reference the ETRs. Absent from JGA application and award documents, however, is any language concerning the ETRs' prohibition against using federal funds for inherently religious activities and discriminating against beneficiaries in the provision of services. Also, as mentioned previously in this report, JGA officials confirmed during the onsite visit that grant recipients are not currently trained on the ETRs.

Since the OCR's onsite visit, the JGA has revised its onsite monitoring tool to include some information on civil rights compliance. It is not evident from the documentation provided to the OCR, however, whether during onsite monitoring visits, JGA grant monitors ask subrecipients specific questions regarding their compliance with the ETRs or any other civil rights requirements; it also does not appear from the monitoring tool that grant monitors ask subrecipients if they need technical assistance in meeting their civil rights obligations.

## **II. Recommendations**

The JGA has few procedures in place for monitoring the civil rights compliance of its subrecipients, such as referencing the laws that the OCR enforces in its standard assurance documents and RFAs, and incorporating a few questions concerning EEOPs and complaints of discrimination in its site monitoring tool. In order to strengthen the JGA's efforts to monitor the civil rights compliance of its subrecipients, the OCR offers the following recommendations: (1)

develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints; (2) specify all potentially applicable statutorily-imposed nondiscrimination requirements in the JGA's sub-grant award agreement and other pre-award documents, including the ETRs' prohibition against using federal funds for inherently religious activities and discriminating against beneficiaries in the provision of services; (3) monitor for compliance with additional civil rights requirements during onsite monitoring visits; (4) provide comprehensive training to DOJ subrecipients on the civil rights laws that the OCR enforces; and (5) allow subrecipients to demonstrate nonprofit status by any of the means identified in the DOJ's Equal Treatment Regulations.

#### **A. Develop Comprehensive Complaint Procedures**

Although the JGA appears to have District-wide protocols for the processing of discrimination complaints from employees, the JGA does not have any procedures in place for addressing discrimination complaints from the employees and beneficiaries of JGA subrecipients. Accordingly, the JGA should adopt a policy for addressing discrimination complaints that includes, at a minimum, the following elements:

- 1) designating a coordinator who is responsible for overseeing the complaint process<sup>6</sup>;
- 2) notifying employees and subrecipients of prohibited discrimination in funded programs and activities and the JGA's policy and procedures for handling discrimination complaints<sup>7</sup>;
- 3) establishing written procedures for receiving discrimination complaints from subrecipient employees and beneficiaries;
- 4) referring each complaint to the appropriate agency for investigation and resolution, such as the U.S. Equal Employment Opportunity Commission or the District of Columbia Office of Human Rights; or referring the complaint to the OCR, which will review the complaint and work with the JGA to resolve the complaint;
- 5) notifying the OCR in writing when the JGA refers a discrimination complaint to another agency or when the JGA investigates the complaint internally; and
- 6) training JGA program staff on their responsibility to refer discrimination complaints or potential discrimination issues to the JGA's complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

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<sup>6</sup> See 28 C.F.R. § 31.202(a)(1).

<sup>7</sup> See 28 C.F.R. § 31.202(b)(3).

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Information about the applicable laws, complaint forms, and the investigative process is available at the OCR's website at [www.ojp.usdoj.gov/ocr/crc](http://www.ojp.usdoj.gov/ocr/crc). Developing a comprehensive policy for addressing discrimination complaints should be a top priority for the JGA. We have enclosed sample policies for your consideration in developing your complaint procedures.

**B. Specify All Potentially Applicable Civil Rights Laws and Implementing Regulations in the JGA's Sub-Grant Award Agreement and other Pre-Award Documents**

As discussed in Section I.A.1 of this Report, subsequent to the onsite visit, in its newly revised RFAs and sub-grant award agreement, the JGA now requires grantees to provide assurances that they and their subrecipients will comply with various applicable civil rights nondiscrimination requirements, including reference to the Equal Treatment Regulations. Although the JGA should be commended for these efforts, we recommend that the JGA incorporate into its standard assurances the following additional language concerning the ETRs' prohibition against use of federal funds for inherently religious activities:

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 provided in part that Department of Justice grant awards of direct funding may not be used to fund any inherently religious activities, such as worship, religious instruction, or proselytization. Recipients of direct grants may still engage in inherently religious activities, but such activities must be separate in time or place from the Department of Justice funded program, and participation in such activities by individuals receiving services from grantee or a sub-grantee must be voluntary. The Equal Treatment Regulation also makes clear that organizations participating in programs directly funded by the Department of Justice are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. Notwithstanding any other special condition of this award, faith-based organizations may, in some circumstances, consider religion as a basis for employment. See [http://www.ojp.gov/about/ocr/equal\\_fbo.htm](http://www.ojp.gov/about/ocr/equal_fbo.htm).

As noted above, also subsequent to the onsite visit, the JGA began including an EEOP certification form as an attachment to its application award notification letter. As a next step, the JGA should now revise the language in its sub-grant award agreement to be consistent with the EEOP certification form; that is, the JGA should replace the language in Section VIII(d) of its standard assurances, which states that "[s]ub-grantee will have on file, a current Equal Employment Opportunity Program (EEOP) plan in accordance with 28 CFR 42.301 et. seq." with language that instead places subrecipients on notice that they must submit to the OCR either an EEOP or a certification form indicating that they are eligible for a full or partial exemption from the EEOP requirement.

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As discussed in Section I.A.1 of this Report, the JGA has also revised its standard assurances in its sub-grant award agreement to advise grant recipients to submit findings of discrimination issued by a federal or District court or administrative agency on the basis of race, color, religion, national origin, or sex to the OCR. The JGA should revise these provisions to reflect that such findings also include findings of disability discrimination. Additionally, the JGA should consider including this language in its RFAs in light of subsection IV(e) of the current template, which is entitled “Non-discrimination in delivery of services and discrimination reporting.” Likewise, the JGA should consider revising the title of this section to include reference to non-discrimination in hiring practices.

In addition to the JGA’s existing assurances, the JGA should consider including a provision requiring subrecipients to certify that they will provide meaningful access to their programs and activities to those persons who may be Limited English Proficient (LEP). In June of 2002, the DOJ issued guidance for its funding recipients and state subrecipients that addressed taking reasonable steps to provide meaningful access to funded programs and activities pursuant to Title VI and the Safe Streets Act. *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41, 455 (June 18, 2002). We encourage you to visit [www.lep.gov](http://www.lep.gov) for additional information about how to provide meaningful access to your federally funded programs to LEP persons.

The JGA may also want to include a provision in 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.

### **C. Monitor for Compliance with Federal Civil Rights Laws During Onsite Monitoring Visits**

By conducting periodic onsite monitoring visits and by recently revising its site monitoring tool to include a civil rights component, the JGA is taking steps to ensure that JGA subrecipients are complying with grant requirements. These onsite monitoring visits, however, do not appear to adequately address federal civil rights laws. Pursuant to the JGA’s responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the JGA should expand upon the current civil rights component of its onsite monitoring visits. Currently, the JGA bundles up all civil rights requirements in the following paragraph of its monitoring tool, which seeks the following documentation:

- c. EEOP plan, short form, or waiver certification form on file, as well as written procedures for addressing employee or service discrimination complaints + submitted filings to JGA/OCR of any findings.

(Site Monitoring Tool, p. 2.) The JGA should consider revising and expanding this tool by parsing out the applicable civil rights requirements and asking specific questions relating to each. For example, the tool should ask a series of questions concerning EEOP requirements (e.g., whether the subrecipient is required to prepare an EEOP or have one on file for review; whether the subrecipient has submitted an EEOP certification claiming a partial or complete exemption). The tool should also have separate questions concerning the subrecipient's written complaint procedures, as well as whether the subrecipient has submitted any findings of discrimination issued by a federal or District court or administrative agency to the OCR. Additionally, the tool should ask 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 steps to provide meaningful access to its programs and activities to individuals with limited English proficiency (LEP). The tool should also include questions on whether the subrecipient is complying with the Equal Treatment Regulations by not expending federal funding on inherently religious activities and not discriminating based on religion in the delivery of services. Lastly, the tool should ask whether the subrecipient needs training or technical assistance to comply with applicable civil rights laws. We have enclosed a sample Civil Rights Monitoring Checklist for your consideration in developing your monitoring procedures.

**D. Provide Comprehensive Training to Subrecipients on Federal Civil Rights Laws**

The JGA does not currently provide any formal training for its subrecipients concerning their civil rights obligations. To ensure that subrecipients are aware of their obligations under federal civil rights laws, such as the obligation to comply with the DOJ's Equal Treatment Regulations, to provide services to LEP individuals, and to provide the OCR with findings of discrimination issued by a federal or District court or administrative agency on the basis of race, color, religion, national origin, sex, or disability, the JGA should provide periodic training programs for its subrecipients on the applicable federal civil rights laws. The JGA should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the JGA provides the training in person, during a teleconference, or through other means. The OCR is available to provide the JGA with technical assistance in developing civil rights training programs.

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

As discussed in Section I.B.1 of this Compliance Review Report, according to the JGA's response to the data request, it appears that the JGA has required nonprofit organizations to obtain federal tax exempt status under 26 U.S.C. § 501(c)(3) to be eligible for DOJ funding. You have since clarified that tax-exempt status is an eligibility requirement only when it is a federal program requirement. To be clear, unless 501(c)(3) status is required under the particular

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grant program (e.g., programs funded under the federal Juvenile Justice and Delinquency Prevention Act), the JGA should be mindful that applicants may also demonstrate nonprofit status by any of the following means identified in the DOJ's Equal Treatment Regulations: (1) proof that the Internal Revenue Service recognizes the organization as being tax exempt under 501(c)(3) of the Internal Revenue Code; (2) a statement from a state taxing body or state secretary of state certifying that the organization is a nonprofit organization and that no part of the organization's net earnings may benefit any private shareholder or individual; (3) a certified copy of a certificate of incorporation or similar document establishing nonprofit status; and (4) any of the above, if it applies to a state or national parent organization, with a statement by the state or national parent organization that the applicant is a local nonprofit affiliate. 28 C.F.R. § 38.1(g).

### **Conclusion**

We find that the JGA is not fully compliant with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the JGA in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible JGA official contact Attorney Advisor Kimberly Scheckner to develop a timeline and goals for implementing the OCR's recommendations.** Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Scheckner at [REDACTED]

Sincerely,

/s/

Michael L. Alston  
Director

Enclosures