



U.S. Department of Justice

Office of Justice Programs

*Office for Civil Rights*

Washington, D.C. 20531

November 24, 2009

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Arvy Smith  
Deputy State Health Officer  
North Dakota Department of Health  
600 East Boulevard Avenue  
Bismarck, ND 58505-0200

Re: Compliance Review of North Dakota Dep't of Health (09-OCR-0065)

Dear Ms. Smith:

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 North Dakota Department of Health (DOH or Department), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the DOH's compliance with applicable federal civil rights laws along with the Department's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the DOH'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].

On July 29, 2009, the OCR conducted an onsite visit to the DOH's offices in Bismarck, North Dakota to interview Department representatives and to conduct a training program for DOH management and program staff about the federal civil rights laws that the OCR enforces. The OCR would like to thank Ms. Mary Dasovick for assisting OCR attorney Christopher Zubowicz during his onsite visit.

In regard to the limited scope of this compliance review, the OCR concludes that the DOH appears to be taking measures to comply with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about the adequacy of the Department's (1) guidance to subrecipients about their legal obligations regarding applicable federal civil rights laws, (2) onsite monitoring of subrecipients, (3) training for subrecipients, and (4) complaint procedures for responding to certain discrimination allegations. The following Compliance Review Report includes recommendations for improving the DOH's methods for monitoring the civil rights compliance of subrecipients.

## Compliance Review Report: Overview and Recommendations

### I. Overview

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

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

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

##### 1. Standard Assurances

The DOH subawards DOJ funds to subrecipients through the Violence Against Women Act's (VAWA) Services • Training • Officers • Prosecutors Violence Against Women Formula Grant Program (STOP). In order to receive STOP funds, a successful applicant must sign a standard grant agreement, which contains the following language:

#### 18. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights.

CONTRACTOR agrees to file all required reports, make required payroll deductions, and pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums in a timely manner. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

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**26. CIVIL RIGHTS**

The CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964, Executive Order 11246 and Executive Order 11375. In accordance with the aforementioned act, no person shall, on the grounds of race, color, national origin, age, disability, sex, or religion be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or in part, by federal funds.

\* \* \*

**37. RELIGIOUS ACTIVITY**

The CONTRACTOR will comply with the applicable provisions of 45 C.F.R. Parts 74, 87, 92 and 96 regarding equal treatment for faith-based organizations.

(Contract Requirements Addendum for All Agreements Between North Dakota Department of Health (State) and Family Crisis Shelter (Contractor) for Notice of Grant Award and Purchase of Service Agreements at 6, 8-9.) The standard grant agreement also contains general language that it “is subject to the terms and conditions incorporated either directly or by reference in . . . applicable Federal . . . regulations.” (Notice of Grant Award.)

In several instances, the grant agreement fails to address certain applicable federal civil rights requirements. Specifically, it does not but should:

- reference additional statutory nondiscrimination requirements, such as those under the Omnibus Crime Control and Safe Streets Act of 1968, the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975;
- reference the DOJ’s Equal Treatment Regulations;
- comprehensively address applicable Equal Employment Opportunity Plan (EEOP) requirements governing subrecipients by, for instance, requiring the subrecipient to submit a copy of an EEOP or an EEOP certification to the DOH so that the Department can monitor its subrecipients’ compliance with DOJ’s EEOP regulations at 28 C.F.R. § 42.301-.308;
- notify subrecipients that they must submit to the OCR either an EEOP or the OJP’s Certification Form stating that they are eligible for a full or partial exemption from the EEOP requirement; and

- require subrecipients to forward to the DOH or the OCR any finding of discrimination against the subrecipient by a federal or state court or federal or state administrative agency on the grounds of race, color, religion, national origin, or sex.

## 2. Onsite Visits and Other Monitoring Methods

Generally, the DOH partners with the North Dakota Council on Abused Women's Services, Coalition Against Sexual Assault (Council) to conduct an onsite visit of each subrecipient every four years. In calendar year 2008, the Department completed five onsite visits of STOP subrecipients; in calendar year 2009, the DOH conducted two such reviews. The Department performs onsite evaluations of STOP subrecipients using a checklist that elicits information about whether the subrecipient's personnel manual includes an anti-discrimination policy. While the Department does not perform formal desk reviews of subrecipients, it suggested in its response to the OCR's data requests that it monitors reports as they are submitted by subrecipients.

## 3. Training and Technical Assistance

The DOH does not provide training to subrecipients about their federal civil rights obligations. However, the Department and the Council provide general technical assistance to subrecipients during site visits, at Council meetings, and by telephone.

## 4. Complaint Procedures

In reviewing complaint procedures, the OCR evaluated the processes in place for individuals to pursue complaints of employment and services discrimination against the DOH and its subrecipients. The DOH has an equal employment opportunity policy that specifically prohibits discrimination on the basis of race, religion, sex, color, national origin, marital status, age, political affiliation, or any physical or mental disability. The Department encourages applicants and employees to report any concerns to the appropriate human resources director. The State of North Dakota also has an appeals process for employment discrimination grievances involving state employment. *See* N.D. Admin. Code 4-07-20.2-01 to -.07 (2008). In addition, North Dakota, through its Division of Labor (DOL), Human Rights Division, has procedures in place to respond to complaints of discrimination from DOH and subrecipient employees. The DOL is responsible for enforcing the provisions of North Dakota law that prohibit discrimination in employment on the basis of sex, race, color, national origin, religion, age, disability, marital status, an employee's receipt of public assistance, or an employee's participation in certain lawful, off-duty activity. *See* N.D. Cent. Code §§ 14-02.4-01, -03 (2009). A DOH or subrecipient employee also can file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC).

The DOH does not have a written policy or procedure in place that addresses receiving,

investigating, and resolving services discrimination complaints from Department beneficiaries.<sup>1</sup> In contrast, the Council has a grievance procedure that applies to services discrimination complaints filed by beneficiaries of its members' services, including complaints filed by beneficiaries of STOP services. Under the Council's procedure, the respondent organization has ten business days to review and evaluate the beneficiary's allegations. At the conclusion of that preliminary assessment, either party may seek further review by the Council's grievance committee, which also investigates and seeks to resolve the matter. In some cases, a DOH or beneficiary subrecipient also can file a services discrimination complaint with the DOL, which prohibits discrimination in providing public accommodations or public services on the basis of sex, race, color, national origin, religion, age, disability, marital status, or an individual's receipt of public assistance. *Id.* §§ 14-02.4-14, -15.

During their onsite visits, the Department and Council determine whether a subrecipient has a policy prohibiting employment and services discrimination. If a subrecipient receives an employment discrimination complaint, it may notify the DOH or Council about it at some point, although there is no formal reporting mechanism in place. If a subrecipient receives a services discrimination complaint, it must report the allegations to the Council's grievance committee. The Department is not aware of any employment or services discrimination complaints that have been filed relating to DOJ-funded programs.

#### 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.*

As mentioned above, the DOH administers the VAWA STOP program, which promotes a coordinated, multidisciplinary approach to improving the criminal justice system's response to violent crimes against women, such as domestic violence and rape. The DOH does not require nonprofit applicants to obtain federal tax exempt status in order to participate in this program.<sup>2</sup> The DOH awards STOP funds through a request for proposal, which it posts on its Web site. It also sends a letter to various government and community stakeholders notifying them that competitive STOP funds are available. In the application materials, the DOH emphasizes that

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<sup>1</sup> The Department provided the OCR with information about rights of appeal regarding certain state administrative decisions, such as adverse findings against nursing facilities; however, none of the provisions reviewed appears to contemplate the pursuit of a services discrimination complaint by a beneficiary.

<sup>2</sup> While the DOH recognizes that a nonprofit applicant is not required to have federal tax exempt status in order to receive VAWA funding, its site visit checklist for STOP subrecipients asks whether the subrecipient has a 501(c)(3) status letter on file.

faith-based organizations are eligible to apply for funding, and that the program seeks to encourage partnerships between members of the faith community and other stakeholders.

Once the Department receives the applications and reviews them to ensure they are complete, it forwards them to the North Dakota STOP Violence Against Women Advisory Committee (Committee), which is comprised of thirteen members representing the law enforcement, state prosecutor, state and county government, and victim's services communities. The Committee is led by a chairman and consists of three subcommittees (law enforcement subcommittee, discretionary subcommittee, and prosecution subcommittee). The subcommittees make recommendations for funding with the full Committee making the final funding decision. Throughout the Committee's application review process, the DOH acts solely in an advisory capacity. All applicants receive a joint letter from the DOH and Committee Chairman regarding the award amount or the reasons for denial of their fund request. Occasionally, the Department meets with an unsuccessful applicant to explain why it did not receive funding. In fiscal year 2008, two faith-based organizations received STOP funding while a third faith-based group received approval to carry over unused funds from fiscal year 2007. The DOH does not have any specific procedures in place to ensure that funded organizations, including faith-based organizations, comply with the Equal Treatment Regulations.

## **II. Recommendations**

The DOH already has in place a number of procedures for monitoring the civil rights compliance of its subrecipients. To strengthen the Department's monitoring efforts and its inclusion of faith-based organizations in the grant funding process, the OCR offers the following four recommendations: (1) modify the civil rights/nondiscrimination provisions in its Standard Assurances and General Conditions documents, (2) conduct onsite monitoring of all subrecipients and use a federal civil rights laws compliance checklist, (3) provide training to subrecipients regarding their obligations to comply with federal civil rights laws, and (4) develop a comprehensive policy for addressing discrimination complaints.

### **A. Modify the Civil Rights/Nondiscrimination Provisions in Standard Assurances and General Conditions**

The DOH should ensure that all DOJ subrecipients agree to grant agreements that accurately reflect their federal civil rights obligations. To that end, the OCR recommends that the Department revise its grant agreement document to include the following language or substantially similar language, which would apply to all applicants for and subrecipients of DOJ funding, regardless of the amount of federal financial assistance at issue:

Recipient will comply (and will require any subgrantees or contractors to comply) with any applicable federal nondiscrimination requirements, which may include the Omnibus

Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations).

In the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and the Department of Health (DOH).

Recipient will provide an Equal Employment Opportunity Plan (EEOP) to the Office for Civil Rights, Office of Justice Programs and the DOH, if required to submit one; otherwise, it will provide a certification to the Office for Civil Rights, Office of Justice Programs and the DOH that it has a current EEOP on file, if required to maintain one. For grantee agencies receiving less than \$25,000; or grantee agencies with less than 50 employees, regardless of the amount of the award, no EEOP is required. Information about civil rights obligations of grantees can be found at <http://www.ojp.usdoj.gov/ocr/>.

The DOH also should consider requiring subrecipients to agree to the following language or substantially similar language regarding language assistance services:

As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, recipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may

entail providing language assistance services, including oral and written translation, where necessary. Recipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing your budgets and in conducting your programs and activities. Additional assistance and information regarding your LEP obligations can be found at <http://www.lep.gov>.

Finally, the Department may wish to add a sentence stating that, in accordance with federal civil rights laws, the subrecipient shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.

B. Conduct Onsite Monitoring of All Subrecipients and Use Federal Civil Rights Laws Compliance Checklist

As part of its responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the DOH should ensure that it and the Council conduct periodic onsite monitoring of all DOJ subrecipients. The Department also should conduct desk reviews to evaluate compliance areas that may not require onsite visits. Going forward, the DOH should develop and utilize a federal civil rights laws compliance checklist that evaluates the various civil rights requirements that apply to recipients of federal funding (e.g., whether the subrecipient has an EEOP on file or has sent one to the OCR for review; whether the subrecipient has findings of discrimination to report to the DOH or the OCR; whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act; and whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act and Title IX of the Education Amendments of 1972). Additionally, the checklist should include questions that evaluate whether the subrecipient is complying with the DOJ's Equal Treatment Regulations, including the prohibitions against using federal funds to engage in inherently religious activities and discriminating against program beneficiaries on the basis of religion. In an effort to assist the DOH in developing its checklist, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, which is enclosed for the Department's review.

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

The DOH does not appear to provide any training or specific technical assistance to its subrecipients about their federal civil rights obligations. To ensure that subrecipients are aware of their obligations under applicable federal civil rights laws, such as to provide services to LEP individuals and to have procedures in place to receive and evaluate complaints alleging discrimination from employees and beneficiaries, the Department should provide periodic, mandatory training programs for subgrantees. The DOH should provide this training at least

once during a grant cycle, whether it provides the training in person, during a teleconference, or through other means. The OCR is available to provide the Department with technical assistance in developing civil rights training programs. In addition, the DOH should provide ongoing technical assistance to subrecipients regarding their statutory and contractual obligations.

D. Develop Comprehensive Policy for Addressing Discrimination Complaints

As previously noted, the DOH has procedures in place to respond to discrimination complaints from its own employees, and the DOL provides a forum for resolving employment and certain services discrimination complaints filed by subrecipient employees and beneficiaries. The Council also has grievance procedures and a grievance committee that endeavor to address services discrimination complaints filed by Department subrecipients. Nonetheless, the DOH has an obligation as a recipient of federal financial assistance to have in place a policy that comprehensively addresses how it responds to employment and services discrimination complaints that it receives from subrecipient employees and beneficiaries. Specifically, it should ensure that it has a policy for addressing discrimination complaints that includes at a minimum the following elements:

- designating a coordinator who is responsible for overseeing the complaint process;
- notifying Department beneficiaries and subrecipients of prohibited discrimination in funded programs and activities and the DOH's policy and procedures for handling discrimination complaints;
- establishing written procedures for receiving discrimination complaints from subrecipient employees and beneficiaries;
- referring each complaint to the appropriate agency for investigation and resolution, such as the DOL or the EEOC; or referring the complaint to the OCR, which will review the complaint and work with the DOH to resolve it;
- notifying the OCR in writing when the DOH refers a discrimination complaint to another agency or when the Department investigates the complaint internally; and
- training DOH program staff on their responsibility to refer discrimination complaints or potential discrimination issues involving subrecipients to the Department's complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

In an effort to assist the DOH in developing a comprehensive complaint policy, the OCR has prepared sample procedures for responding to discrimination complaints, which are enclosed for the Department's review. While the DOH's adoption of these procedures would satisfy the

Arvy Smith, Deputy State Health Officer  
North Dakota Department of Health  
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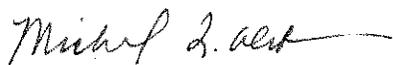
instant recommendation, the OCR also recognizes that there may be other, equally effective complaint procedures that accomplish the same objectives. Additional information about the applicable laws, complaint forms, and the investigative process can be found at <http://www.ojp.usdoj.gov/ocr/crc>.

### III. Conclusion

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

Thank you for your cooperation and the assistance of your staff during the compliance review process. If you have any questions, please contact Mr. Zubowicz at [REDACTED]

Sincerely,



Michael L. Alston  
Director

Enclosures

cc: Ms. Mary Dasovick  
North Dakota Department of Health

## Federal Civil Rights Compliance Checklist

1. If the subrecipient is required to prepare an Equal Employment Opportunity Plan (EEOP) in accordance with 28 C.F.R. §§ 42.301-.308, does the subrecipient have an EEOP on file for review?

Yes       No

If yes, on what date did the subrecipient prepare the EEOP?

2. Has the subrecipient submitted an EEOP Short Form to the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), if required by 28 C.F.R. §§ 42.301-.308? If the subrecipient is not required to submit an EEOP Short Form to the OCR, has it submitted a certification form to the OCR claiming a partial or complete exemption from the EEOP requirements?

Yes – submitted an EEOP Short Form     Yes – submitted a certification     No

If the subrecipient prepared an EEOP Short Form, on what date did the subrecipient prepare it?

3. How does the subrecipient notify program participants and beneficiaries that it does not discriminate on the basis of race, color, national origin, religion, sex, disability, and age in the delivery of services (e.g. posters, inclusion in brochures or other program materials, etc.)?

Comments:

4. How does the subrecipient notify employees that it does not discriminate on the basis of race, color, national origin, religion, sex, and disability in employment practices (e.g. posters, dissemination of relevant orders or policies, inclusion in recruitment materials, etc.)?

Comments:

5. Does the subrecipient have written policies or procedures in place for notifying program beneficiaries how to file complaints alleging discrimination by the subrecipient with the [State Administering Agency] or the OCR?

Yes       No

If yes, an explanation of these policies and procedures:

6. If the subrecipient has 50 or more employees and receives DOJ funding of \$25,000 or more, has the subrecipient taken the following actions:

- a. Adopted grievance procedures that incorporate due process standards and provide for the prompt and equitable resolution of complaints alleging a violation of the DOJ regulations implementing Section 504 of the Rehabilitation Act of 1973, found at 28 C.F.R. Part 42, Subpart G, which prohibit discrimination on the basis of a disability in employment practices and the delivery of services.

Yes       No

- b. Designated a person to coordinate compliance with the prohibitions against disability discrimination contained in 28 C.F.R. Part 42, Subpart G.

Yes       No

- c. Notified participants, beneficiaries, employees, applicants, and others that the subrecipient does not discriminate on the basis of disability.

Yes       No

Comments:

7. If the subrecipient operates an education program or activity, has the subrecipient taken the following actions:

- a. Adopted grievance procedures that provide for the prompt and equitable resolution of complaints alleging a violation of the DOJ regulations implementing Title IX of the Education Amendments of 1972, found at 28 C.F.R. Part 54, which prohibit discrimination on the basis of sex.

Yes       No

b. Designated a person to coordinate compliance with the prohibitions against sex discrimination contained in 28 C.F.R. Part 54.

Yes       No

c. Notified applicants for admission and employment, employees, students, parents, and others that the subrecipient does not discriminate on the basis of sex in its educational programs or activities.

Yes       No

Comments:

8. Has the subrecipient complied with the requirement to submit to the OCR any findings of discrimination against the subrecipient issued by a federal or state court or federal or state administrative agency on the grounds of race, color, religion, national origin, or sex?

Yes       No

Comments:

9. What steps has the subrecipient taken to provide meaningful access to its programs and activities to persons who have limited English proficiency (LEP)?

Comments, including an indication of whether the subrecipient has developed a written policy on providing language access services to LEP persons:

10. Does the subrecipient conduct any training for its employees on the requirements under federal civil rights laws?

Yes       No

Comments:

11. If the subrecipient conducts religious activities as part of its programs or services, does the subrecipient do the following:

a. Provide services to everyone regardless of religion or religious belief.

Yes       No

b. Ensure that it does not use federal funds to conduct inherently religious activities, such as prayer, religious instruction, or proselytization, and that such activities are kept separate in time or place from federally-funded activities.

Yes       No

c. Ensure that participation in religious activities is voluntary for beneficiaries of federally-funded programs.

Yes       No

Comments:

<b>Subject:</b> Procedures for Responding to Discrimination Complaints from Employees of the [State Administering Agency's] Subrecipients under U.S. Department of Justice Grant Programs
<b>Policy Number:</b>
<b>Effective Date:</b>

## I. Purpose

[Note: Most often, a State Administering Agency (SAA) will already have procedures in place to address discrimination complaints from its own employees and applicants. Therefore, these template complaint procedures are limited to discrimination complaints from employees of the SAA's subrecipients. If the SAA does not already have procedures in place for addressing discrimination complaints from its own employees, it should ensure that these procedures cover complaints from SAA employees as well.

In this section, the SAA should explain the purpose of this document, such as to establish written procedures for SAA employees to follow when they receive a complaint alleging employment discrimination from an employee of a SAA subrecipient implementing funding from the U.S. Department of Justice (DOJ).]

## II. Policy

[The SAA should explain its policy regarding employment discrimination by subrecipients, such as a statement that all employees and applicants of the SAA's subrecipients shall be treated equally regardless of race, color, national origin, sex, religion, and disability. The SAA may wish to state that it will ensure that subrecipients comply with all applicable federal laws regarding employment discrimination.]

## III. Definitions

[The SAA may wish to include definitions of relevant terms, such as "discrimination," "complaint coordinator," and "retaliation."]

## IV. Complaint Procedures

[The SAA should explain its procedures for responding to employment discrimination complaints against SAA subrecipients. These procedures should include, at a minimum: 1) a designation of the SAA employee who is responsible for coordinating the series of actions described in these procedures; 2) an explanation of how a SAA employee receiving a discrimination complaint from an employee or applicant of a SAA subrecipient should forward the complaint to the employee responsible for coordinating the series of actions described in these procedures; 3) an explanation that the employee responsible for coordinating the series of actions described in these procedures should

refer employment discrimination complaints against SAA subrecipients to the U.S. Equal Employment Opportunity Commission (EEOC) or the appropriate state or local fair employment practices agency or human rights commission; and 4) a requirement that the employee responsible for coordinating the series of actions described in these procedures notify the Office for Civil Rights (OCR), Office of Justice Programs, DOJ, in writing when the employee refers a complaint to the EEOC or a state or local fair employment practices agency or human rights commission. Other options for responding to employment discrimination complaints against SAA subrecipients include the SAA investigating these complaints and notifying the OCR of the investigation and outcome, or referring the complaints to the OCR.

In this section, the SAA should also explain how it will ensure that subrecipients have procedures in place for responding to discrimination complaints that employees or applicants file directly with the subrecipient. At a minimum, these procedures should include forwarding the complaint to the EEOC or a state or local fair employment practices agency or human rights commission and notifying the SAA of this referral.]

## **V. Training**

[The SAA should describe its procedures for providing periodic training for agency employees on these complaint procedures, including an employee's responsibility to refer discrimination complaints from employees or applicants of SAA subrecipients to the employee responsible for coordinating the series of actions described in these procedures. The SAA shall also describe in this section how it will disseminate these procedures to agency employees, such as by posting the procedures on the agency intranet website, providing a copy of the procedures to employees during the training sessions, distributing the procedures to all new employees during orientation, etc.]

<b>Subject:</b> 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
<b>Policy Number:</b>
<b>Effective Date:</b>

## I. Purpose

[The State Administering Agency (SAA) should explain the purpose of this document, i.e., to establish written procedures for SAA employees to follow when they receive a complaint alleging discrimination from clients, customers, program participants, or consumers of the SAA or of a SAA subrecipient implementing funding from the U.S. Department of Justice (DOJ).]

## II. Policy

[The SAA should explain its policy regarding discrimination against clients, customers, program participants, or consumers of the SAA or the SAA's subrecipients, such as a statement that all individuals have the right to participate in programs and activities operated by the SAA and SAA subrecipients regardless of race, color, national origin, sex, religion, disability, and age. The SAA may wish to state that it will ensure that the SAA and its subrecipients are in compliance with the following statutes and regulations:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin in the delivery of services (42 U.S.C. § 2000d), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart C;
- The Omnibus Crime Control and Safe Streets Act of 1968, which prohibits discrimination on the basis of race, color, national origin, religion, or sex in the delivery of services and employment practices (42 U.S.C. § 3789d(c)(1)), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart D;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (29 U.S.C. § 794), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart G;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (42 U.S.C. § 12132), and the DOJ implementing regulations at 28 C.F.R. Part 35;

- Title IX of the Education Amendments of 1972, which prohibit discrimination on the basis of sex in educational programs (20 U.S.C. § 1681), and the DOJ implementing regulations at 28 C.F.R. Part 54; and
- The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services (42 U.S.C. § 6102), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart I.
- The DOJ regulations on the Equal Treatment for Faith-Based Organizations, which prohibit discrimination on the basis of religion in the delivery of services and prohibit organizations from using DOJ funding on inherently religious activities (28 C.F.R. Part 38).

The SAA may also wish to include a statement that these laws prohibit agencies from retaliating against an individual for taking action or participating in action to secure rights protected by these laws.]

### **III. Definitions**

[The SAA may wish to include definitions of relevant terms, such as “discrimination” and “complaint coordinator.”]

### **IV. Complaint Procedures**

[The SAA should clearly explain its procedures for accepting and responding to discrimination complaints from clients, customers, program participants, or consumers of the SAA and SAA subrecipients. These procedures should include, at a minimum: 1) a designation of the SAA employee who is responsible for coordinating the series of actions described in these procedures; 2) an explanation of how a client, customer, program participant, or consumer may file a complaint of discrimination (i.e. on a specific complaint form, in a letter, in an email, in person, or over the phone); 3) an explanation of how a SAA employee receiving a complaint of discrimination should forward the complaint to the employee who is responsible for coordinating the series of actions described in these procedures; 4) an explanation of whether the SAA will provide the client, customer, program participant, or consumer with any written acknowledgement of the complaint, and how the SAA will correspond with the complainant throughout the investigation; and 5) an explanation of how the SAA will investigate and resolve the complaint, such as whether the SAA will conduct an internal investigation of the complaint, or whether it will refer the complaint to an appropriate external agency for investigation, such as a local or state human rights commission, or the Office for Civil Rights (OCR), Office of Justice Programs, DOJ.

If the SAA’s procedures involve referring the complaint to another agency or agencies for investigation and resolution, the SAA should clearly explain the necessary steps for making this referral. If the SAA’s procedures involve investigating the complaint internally or referring the complaint to an external agency other than the OCR, such as a

local or state human rights commission, the SAA should list the procedures for notifying the OCR in writing of the referral and for notifying the beneficiary that he or she may also file a complaint with the OCR. If the SAA chooses to investigate these complaints internally, the SAA should explain what office or division of the SAA will have responsibility for investigating the complaint and how the SAA will conduct the investigation.

In this section, the SAA should also explain how it will notify clients, customers, program participants, or consumers of the SAA and SAA subrecipients of prohibited discrimination, along with the procedures for filing a discrimination complaint with the SAA and the OCR. Notification may include placing posters in SAA facilities, including reference in program materials, or providing clients, customers, program participants, or consumers with a copy of these complaint procedures. The SAA should also explain how it will ensure that subrecipients have procedures in place for responding to discrimination complaints that clients, customers, program participants, or consumers of a subrecipient file directly with the subrecipient. At a minimum, these procedures should include forwarding the complaint to the SAA, the OCR, or another appropriate external agency, such as a local or state human rights commission; notifying the SAA of any discrimination complaints that the subrecipient does not refer to the SAA; and notifying the complainant that he or she may file a complaint of discrimination directly with the SAA or with the OCR.]

## **V. Training**

[The SAA should describe its procedures for providing periodic training for agency employees on these complaint procedures, including an employee's responsibility to refer discrimination complaints from clients, customers, program participants, or consumers to the employee responsible for coordinating the series of actions described in these procedures. The SAA shall also describe in this section how it will disseminate these procedures to agency employees, such as by posting the procedures on the agency intranet website, providing a copy of the procedures to employees during the training sessions, distributing the procedures to all new employees during orientation, etc.]