



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

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*Washington, D.C. 20531*

September 11, 2012

**BY CERTIFIED AND ELECTRONIC MAIL**

Thomas A. Morrison  
Director  
Guam Bureau of Statistics and Plans  
P.O. Box 2950  
Hagåtña, Guam 96932

Re: Compliance Review of Guam Bureau of Statistics and Plans (12-OCR-0161)

Dear Mr. Morrison:

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

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

On May 14, 2012, the OCR conducted an onsite visit with the BSP in Hagåtña, Guam, to interview management and program staff; we also provided a training program for Bureau representatives about the OCR and the federal civil rights laws that the OCR enforces, how the OCR enforces civil rights laws, a recipient's obligations to provide services to limited English proficient individuals, civil rights laws that affect faith-based organizations, and effective ways

to monitor subrecipient compliance with applicable civil rights obligations. The OCR would like to thank your personnel for assisting the DOJ during its onsite visit. In regard to the limited scope of this Compliance Review, the OCR concludes that the BSP is in substantial compliance with its obligations as an SAA to monitor the civil rights compliance of its subrecipients. This Compliance Review Report first examines the BSP'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 Bureau's implementation of the DOJ's Equal Treatment Regulations.

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

SAAs have a responsibility to monitor their subrecipients to ensure that those subrecipients comply with the federal civil rights laws that are applicable to recipients of federal financial assistance. In accordance with 28 C.F.R. §§ 42.105(d)(2), 42.504(a), 42.725, and 54.115, SAAs must establish and implement written Methods of Administration (MOA) for ensuring their subrecipients' compliance with the prohibition of race, color, and national origin discrimination contained in Title VI of the Civil Rights Act of 1964 (Title VI) (42 U.S.C. § 2000d) and the DOJ regulations at 28 C.F.R. pt. 42, subpt. C; the prohibition of disability discrimination contained in Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794) and the DOJ regulations at 28 C.F.R. pt. 42, subpt. G; the prohibition of age discrimination contained in the Age Discrimination Act of 1975 (Age Discrimination Act) (42 U.S.C. § 6102) and the DOJ regulations at 28 C.F.R. pt. 42, subpt. I; and the prohibition of sex discrimination in education programs contained in Title IX of the Education Amendments of 1972 (Title IX) (20 U.S.C. § 1681) and the DOJ regulations at 28 C.F.R. pt. 54. These MOA are the reasonable assurance that SAAs provide to the DOJ that they are ensuring the civil rights compliance of their subrecipients.<sup>1</sup>

The MOA, as required under Title VI, Section 504, the Age Discrimination Act, and Title IX, or expanded to address compliance with the Equal Treatment Regulations and the nondiscrimination provisions of the Safe Streets Act, the JJDP, and VOCA (as applicable) must be in writing and must describe its mechanisms for (1) handling employment and services discrimination complaints involving subrecipients, (2) notifying subrecipients of civil rights requirements, (3) monitoring subrecipients for compliance with civil rights requirements, and (4) training subrecipients on civil rights requirements. On August 17, 2012, the BSP submitted its MOA to the OCR for review. After carefully considering this submission, the OCR

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<sup>1</sup> An SAA's expansion of its written MOA to include the Equal Treatment Regulations and the prohibitions of discrimination contained in the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) (42 U.S.C. § 3789d(c)), the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP) (42 U.S.C. § 5672(b)), the Victims of Crime Act of 1984 (VOCA) (42 U.S.C. § 10604(e)), and the DOJ implementing regulations (as applicable) will be considered strong evidence of the SAA's fulfillment of its responsibility to ensure subrecipients' compliance with these laws.

concludes that it satisfies each of these four standards.

## **II. 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) (2011). The Regulations prohibit the DOJ and DOJ-funded recipients from discriminating either for or against an organization on the basis of the organization’s religious character or affiliation. *Id.* In evaluating the BSP’s equitable treatment of faith-based organizations, the Compliance Review Report focuses on two issues: (1) the review process for making awards to applicant faith-based organizations; and (2) procedures for ensuring that funded faith-based organizations comply with applicable federal civil rights laws.

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

The BSP administers the Bureau of Justice Assistance’s Edward Byrne Memorial Justice Assistance Grants (JAG) program, which provides funding to states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system.<sup>2</sup> Generally, BSP uses a request for proposal (RFP) process to subaward JAG funds. When the Bureau issues an RFP, it sends a notification e-mail to current subrecipients. In an effort to inform other potential applicants about the program, the BSP places advertisements in the local newspaper that explain the designated purpose areas for JAG funding. BSP staff persons are also available to provide technical assistance to entities before they submit their applications. Once applicants submit their proposals, Bureau personnel review the submissions to determine whether they adhere to the RFP’s requirements. If a proposal is deficient on its face, then the BSP does not consider its merits. Once staff members complete this initial assessment, the proposals are reviewed by a committee, which consists of three members who are appointed by the Director of the Bureau. In evaluating proposals, the committee considers, among other factors, whether they would support the identified purpose areas for the JAG program. Through this process, the committee makes recommendations about which proposals should receive funds, and at what funding levels. These recommendations are reviewed by BSP’s Chief Planner, who in turn provides his own recommendations to the Director of the Bureau. The Director makes the final award decisions.

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<sup>2</sup> BSP also administers the Residential Substance Abuse Treatment for State Prisoners (RSAT) program; however, to date, the Bureau has only requested RSAT funding from OJP to support the Guam Department of Corrections’ (GDOC) substance abuse treatment program. While the OCR defers to the Bureau’s determination that the GDOC is best suited to provide RSAT-funded services, we encourage the Bureau to consider the feasibility of expanding this program to include community- and faith-based organizations.

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Faith-based organizations are eligible to participate in the JAG program as subrecipients. Despite their eligibility to receive subawards, no faith-based groups have applied to receive JAG funds from the BSP.

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

The Equal Treatment Regulations circumscribe how faith-based subrecipients may use federal financial assistance. Specifically, such subgrantees may not engage in inherently religious activities with federal funds; nor can they discriminate against potential or actual program beneficiaries on the basis of religion or religious belief. 28 C.F.R. §§ 38.2(b)(1), (d). As noted above, there are no faith-based organizations that receive JAG funds from the BSP. Despite the absence of faith-based subrecipients, the BSP uses a federal civil rights checklist that evaluates whether funded organizations provide services consistent with their obligations under the Equal Treatment Regulations. Through this checklist, the Bureau monitors whether subgrantees (1) provide services to everyone regardless of religion or religious belief; (2) ensure that they do not use federal funds to conduct inherently religious activities, and that any such activities are kept separate in time or place from federally funded activities; and (3) ensure that participation in religious activities is voluntary for beneficiaries of federally funded programs.

Based on the information provided to the OCR in connection with the instant compliance review, we conclude that the BSP is in substantial compliance with its obligations under the Equal Treatment Regulations.

### **III. Conclusion**

After thoroughly reviewing all of the measures undertaken by the BSP to implement an appropriate MOA protocol and to comply with the Equal Treatment Regulations, the OCR concludes that the Bureau is in substantial compliance with its obligations as an SAA to monitor the civil rights compliance of its subrecipients. Therefore, we will administratively close this matter.

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I would like to thank the BSP for its continued cooperation during the course of the compliance review and the professional courtesies you extended to Attorney Advisor Christopher Zubowicz during the OCR's review. If you have any further questions regarding this matter, please contact Mr. Zubowicz at 202.305.9012.

Sincerely,

/s/ Michael L. Alston

Michael L. Alston  
Director

cc: Lola E. Leon Guerrero, Planner, Guam Bureau of Statistics and Plans (by electronic mail)