



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

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*Washington, D.C. 20531*

**Via Certified Mail Return Receipt Requested**

September 10, 2012

Mark Emkes  
Commissioner  
State of Tennessee Department of Finance and Administration  
William R. Snodgrass Tennessee tower  
312 Rosa L. Parks Avenue, Suite 1200  
Nashville, Tennessee 37243-1102

Re: Compliance Review Report for Tenn. Dep't of Fin. & Admin.  
(11-OCR-0356)—Final

Dear Commissioner Emkes:

On May 16, 2012, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) initiated the above-referenced Compliance Review of the Tennessee Department of Finance and Administration (DFA) in accordance with 28 C.F.R. § 42.206. The stated purpose of the Compliance Review was to examine not only the DFA's compliance with the applicable federal civil rights laws but also the DFA's monitoring process to ensure that its subrecipients comply with the same laws. On August 15, 2012, the OCR submitted a draft report to the DFA for comment. On August 24, 2012, the DFA sent proposed revisions that the OCR accepted.

**Compliance Review Report**

**A. Prior Compliance Review**

In September of 2005, the OCR initiated a compliance review of the DFA to review "DFA's procedures for monitoring the civil rights compliance of subrecipients." *See* Tenn. Dep't of Fin. & Admin., No. 05-OCR-0287, Office for Civ. Rts. Compl. Rev. Rep. 1 (U.S. Dep't of Justice Dec. 9, 2005) (on file with the OCR). The compliance review also examined "DFA's procedures for reviewing applicants from faith-based organizations and monitoring the civil rights

compliance of faith-based subrecipients.” *Id.* 2. The compliance review resulted in the DFA’s making changes to its monitoring procedures, including the establishment of a process to respond to civil rights complaints from beneficiaries who allege discrimination in DOJ-funded programs.

## **B. Compliance Procedures**

The DFA retains a range of monitoring procedures that ensure not only its own compliance with the applicable federal civil rights but also the compliance of its subrecipients with the same laws.

### **1. Grant Contract and Assurances**

The grant contract for DOJ programs that the DFA administers includes the following standard nondiscrimination language:

The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Grantee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

Resp. Attach. A. (Grant Contract para. D.8.).

In Chapter XXII, Civil Rights Compliance, in the Administrative Manual for the Office of Criminal Justice Programs (OCJP), a component of the DFA that administers DOJ grant programs, there is a list of the federal laws that apply to OCJP subrecipients that receive DOJ funding. Resp. Attach. T. The brief summary about the scope of application of each law may, however, be misleading. For example, the Administrative Manual states that the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968 applies to all funded programs from two DOJ components, the OJP and the Office of Community Oriented Policing Services (COPS). *Id.* Although this may be generally true, some other DOJ grant programs that the OCJP administers (e.g., the Office on Violence Against Women’s (OVW) Services • Training • Officers • Prosecution (STOP) grant program) are also subject to the nondiscrimination provisions of the Safe Streets Act. For another example, the Administrative Manual states that Title VI of the Civil Rights Act (Title VI) of 1964 applies to both OJP- and COPS-funded subrecipients. Although this is true, the scope of Title VI’s coverage is much broader, applying to all federally assisted programs, not just to the programs that the OJP and COPS funds. For

information on the distinction between cross-cutting federal civil-rights statutes that apply to all federally assisted programs and civil rights statutes that apply only to subrecipients of DOJ grant-making offices, please see the OCR's online training program, What is the Office for Civil Rights and What Laws Does it Enforce? Office for Civil Rights—Training for Grantees, <http://www.nij.gov/ocr-training-videos/video-ocr-training.htm#videolinks> (last visited Aug. 10, 2012).

The list of the laws that protect civil rights in the Administrative Manual does not include the federal regulation Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 (Equal Treatment Regulation) and the presidential executive orders related to funding faith-based organizations. See Exec. Order No. 13,559, 75 Fed. Reg. 71,319 (Nov. 17, 2010) (Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations); Exec. Order No. 13,279, 67 Fed. Reg. 77,141 (Dec. 12, 2002) (Equal Protection of the Laws for Faith-Based and Community Organizations).

## **2. Certification of Regulations Compliance**

As part of the grant-making process, OCJP requires subrecipients of DOJ grant programs to endorse a Certification of Regulations Compliance.<sup>1</sup> An administrative official of an organization applying for funding must certify, as a condition for financial assistance, that the organization will adhere to the DFA's understanding of the DOJ's nondiscrimination requirements:

I certify that this agency will maintain data (and submit when required) to ensure that: our services are delivered in an equitable manner to all segments of the service population; our employment practices comply with Equal Opportunity Requirements, 28 CFR 42.207 and 42.301 et. Seq.; our projects and activities provide meaningful access for people with limited English proficiency as required by Title VI of the Civil Rights Act, (See also 2000 Executive Order #13166).

Resp. Attach. B. at 1. The Certification also states that the subrecipient will report findings of discrimination to the OCJP and requires the subrecipient to identify and provide contact information for the person in the subrecipient's organization who is responsible for reporting the findings of discrimination. *Id.* The instruction in the Administrative Manual regarding the obligation subrecipients have to submit findings of discrimination to the OCR for review is not,

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<sup>1</sup> The full name of the document is Tennessee Certification of Compliance with Regulations from U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights for Subgrants Issued by the Tennessee Department of Finance and Administration, Office of Criminal Justice Programs, Nashville, Tennessee. See Resp. Attach. B.

however, accurate. Subrecipients have no obligation to submit findings of discrimination based on disability. *See* 28 C.F.R. § 42.204(c).

The Certification contains information about the requirement that some subrecipients have under the Safe Streets Act to create, maintain on file, or submit to the OCR for review an Equal Employment Opportunity Program (EEO). Resp. Attach B. at 2.

For the most part, the information in the Certification is accurate, however, the Certification retains in more than one place incorrect information that ties the subrecipient's obligation to create an EEO to the cumulative receipt of a million dollars from the DOJ in an eighteen-month period.

### **3. Monitoring Procedures**

The DFA monitors subrecipients based on an annual risk assessment. Resp. para. 9(a); Resp. Attach. K. Factors that affect characterizing a subrecipient as having a low, moderate, or high risk include the quality, training, and turnover of staff; its history of meeting program requirements; and the amount of funding. *Id.* The DFA “must monitor a minimum of 1/3 of all subrecipient contracts executed by the agency’ and ‘2/3 of the current year aggregate maximum liability value of the agency’s entire subrecipient grant populations’ each year.” Resp. para. 9(a) (citation omitted). Generally, DFA monitors all subrecipients at least once during the grant period, and subrecipients receive a monitoring visit at least once every three years. *Id.*

#### **a. Tennessee Subrecipient Contract Manual**

The State of Tennessee has published the *Tennessee Subrecipient Contract Monitoring Manual*, which provides guidance to all state agencies that are responsible for monitoring subrecipients of state and federal grants. Resp. Attach. C. The *Manual* instructs state agencies to develop a monitoring plan, which may include information on the subrecipient population, the monitoring cycle, monitoring guides, staffing, risk assessment, findings, and corrective action plans. *Id.* 6-8. The *Manual* states that one of the core monitoring areas is compliance with Title VI. *Id.* 19 (citing *id.* 43). The *Manual* directs state monitoring agencies to comply with the Title VI Compliance Commission Advisory Memorandum of April 14, 2004. *Id.* The Advisory Memorandum counsels state agencies that award federal financial assistance to “have an effective and verifiable oversight and monitoring program” to ensure the compliance of subrecipients with Title VI. *Id.* 44. The Advisory Memorandum notes that a state agency’s “method of administration” should include at least the following elements: (1) public outreach and education; (2) training for subrecipients on the requirements of Title VI; (3) procedures for responding to Title VI complaints; (4) compliance review procedures; (5) ways to collect racial

and ethnic data of beneficiaries; and (6) procedures for evaluating, both pre-award and post-award, a subrecipient's compliance programs. *Id.* The Advisory Memorandum also encourages state agencies "to collect employment data on their sub-recipients to improve their ability to effectively monitor their sub-recipient's efforts to comply with Title VI." *Id.* 45.

**b. OCJP's *Internal Monitoring Policy Manual***

Consistent with the *Manual's* instructions, which apply to all State of Tennessee agencies, the OCJP has developed its own *Internal Monitoring Policy Manual*. Resp. Attach. D. The OCJP manual includes guidance on the core areas of subrecipient monitoring, as well as information on the frequency, scope, and procedures for monitoring. *Id.* 2-3. Echoing the *Manual*, the OCJP's policy manual states that one core monitoring area for subrecipients is compliance with Title VI. *Id.* 2, 17. According to OCJP's policy manual, every final monitoring report of an OCJP subrecipient should include a section on its compliance with Title VI, noting whether the monitor interviewed the subrecipient's staff on Title VI compliance issues; reviewed the subrecipient's Title VI policies; checked the subrecipient's grievance policy; inspected the subrecipient's posting of Title VI information; reviewed the records of program beneficiaries; and, when possible, conducted interviews with program beneficiaries. *Id.* 12. The OCJP requires each final monitoring report for subrecipients to contain information about the subrecipient's nondiscrimination policies, including procedures for serving its limited English proficient (LEP) population. *Id.* 12-13.

**c. OCJP's Annual Monitoring Plans FY 2011 and FY 2012**

The OCJP provided the OCR with annual subrecipient monitoring plans for FY 2011 and FY 2012. Resp. Attachs. E. & F. For DOJ grant programs, both plans identify the OCJP as the responsible state administering agency. Resp. Attach E. at 4-5; Resp. Attach F. at 4-6. Included in the FY 2011 plan was a chart summarizing the OCJP's monitoring findings for 2010. Resp. Attach. E. (Summary of OCJP 2010 Findings).

The FY 2011 monitoring plan contained the document, Detail Review Guide: Core Monitoring Areas (Guide) (Resp. Attach. E.; Resp. Attach. I.), which the OCR understands that monitors use to review the compliance of subrecipients with grant requirements. The Guide contains a one-page assessment tool related to Title VI, which was apparently borrowed from the State of Tennessee's *Manual*. Resp. Attach. C. at 41. The Guide states that "[t]he objective of the test of Title VI is to provide assurance that policies and actions taken by the subrecipient do not exclude any person from employment or participation in the program based on the grounds of race, color, or national origin." *Id.* The Title VI assessment consists of the following three considerations:

1. Assess Title VI compliance for the subrecipient contracts being monitored. Some state agencies have unique requirements.
2. Design and test attributes to ensure compliance requirements met.
3. Document testwork performed.

*Id.* The assessment tool then asks the monitor to summarize the results of the “Title VI testwork” from July 1, 2010 through June 30, 2011. *Id.*

Consistent with OCJP’s manual, the Guide includes an excellent checklist that helps the monitor assess the civil rights compliance of subrecipients. *Id.* (OCJP Monitoring Guide for Civil Rights); *see also* Resp. Attach. H. (FY 2012). The monitoring checklist includes the following inquiries:

- whether the subrecipient has completed a self-evaluation under Section 504 of the Rehabilitation Act (Section 504) of 1973;
- whether the subrecipient has completed civil rights assurances or a Title VI self-evaluation;
- whether the subrecipient has posted “in conspicuous places available to employees and applicants” notices of the all applicable civil rights laws;
- whether the subrecipient has relevant civil rights policies and procedures, including grievance procedures;
- whether the subrecipient has developed an EEOP and submitted it, if required to do so, to the OCR;
- whether the subrecipient has documented its training to staff on nondiscrimination issues;
- whether the subrecipient has designated a staff member as a civil rights compliance coordinator who is responsible for reporting to OCJP and the OCR findings of discrimination;
  - whether the subrecipient has received any civil rights complaints;
- whether the subrecipient has forwarded any civil rights complaints to the OCJP;
- whether the subrecipient has effectively disseminated program information to minority communities;
  - whether the agency has implemented a language assistance plan;
- whether, based on beneficiary records, the subrecipient has applied eligibility criteria to participants in funded program equitably; and
- whether, based on staff and beneficiary interviews, the subrecipient has conducted its programs or activities in a nondiscriminatory manner.

Resp. Attach. E.

The Guide's civil rights checklist includes Definitions for Civil Rights Monitoring (Definitions). *Id.*; Resp. Attach. H. In addition to citing the "Contract Nondiscrimination Clause," (*see supra* Part B.1.); the Definitions provide brief information on some of the laws that the OCR enforces, including Title VI, Title VII of the Civil Rights Act (Title VII) of 1964,<sup>2</sup> Section 504, the Americans with Disabilities Act of 1990, the Age Discrimination Act (Age Act) of 1975, and Title IX of the Education Amendments (Title IX) of 1972. There are two statutes that the Definitions cite that are not within the OCR's jurisdiction: the Age Discrimination in Employment Act of 1967 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974.

The Definitions contain a misstatement concerning Title VI's protected classes: "Title VI prohibits discrimination on the basis of race, color, or national origin (age and sex have since been added through amendments) in any program or activity that receives Federal funds or other Federal financial assistance." *Id.* The information in the parenthetical phrase is not accurate; Congress never amended Title VI to include the protected classes of sex and age. Congress did, however, enact the Age Act to prohibit discrimination on the basis of age in the delivery of services or benefits in all federally assisted programs. Congress also enacted Title IX to prohibit discrimination on the basis of sex in all federally assisted educational programs. DOJ program statutes (i.e., the Safe Streets Act, the Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974, and the Victims of Crime Act (VOCA) of 1984), which apply only to DOJ subrecipients that receive funding under these statutes, do, however, prohibit discrimination based on sex in employment and in the delivery of services or benefits.

In addition to the civil rights monitoring checklist, the Guide contains program-specific "compliance items" that are related to federal civil rights protections. Resp. Attach. E. For subrecipients of funding under the Residential Substance Abuse Treatment (RSAT) Grant Program from the BJA, the Guide requires the monitor to determine whether the subrecipient "can document that it adheres to nondiscrimination requirements in its employment practices and delivery of services." *Id.* (RSAT Guide para. 20). For subrecipients of funding under the STOP grant program, the Guide requires the monitor to inquire whether "men who are victims of domestic violence, sexual assault or stalking [are] being accepted into the program." *Id.* (OCJP Monitoring Guide—STOP Specific Section para. 3). For subrecipients that receive funding under the Department of Health and Human Services' Family Violence Shelters (FVS) Grant Program, the Guide requires the monitor to determine whether the subrecipient is providing services to persons with disabilities and whether the funded shelter is accessible to persons with disabilities. *Id.* (OCJP Monitoring Guide—FVS Specific Section para. 12).

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<sup>2</sup> Although the OCR does not directly enforce Title VII, it applies the standards of Title VII in evaluating employment discrimination complaints under the Safe Streets Act and related statutes. *See* 28 C.F.R. § 42.203(c).

**d. DFA Implementation Plan**

The DFA also submitted to the OCR its comprehensive plan for enforcing Title VI and Title IX, The Department of Finance and Administration Compliance Review & Implementation Plan (Oct. 1, 2011) (Implementation Plan). Resp. Attach. J. The Implementation Plan discusses the DFA's Title VI and Title IX policies, noting that it values honesty in professional relationships, has a commitment to the implementation of the Plan, appreciates diversity, cultivates an awareness of the need for improvement, and "strive[s] to be a herald in Tennessee State Government for the . . . appreciation of innovative . . . mechanisms for building . . . quality relationships with all people." *Id.* 22. The Implementation Plan also identifies the following prohibited practices:

- denying any individual any services, opportunity, or other benefit for which he or she is otherwise qualified;
- providing any individual with any service or other benefit, which is different or is provided in a different manner from that which is provided to others under the program;
- subjecting any individual to segregated or separate treatment in any manner related to his or her receipt of service;
- restricting any individual in any way in the enjoyment of services; facilities; or any other advantage, privilege, or other benefit provided to others under the program;
- adopting methods of administration that would limit participation by any group of recipients or subject them to discrimination;
- addressing an individual in a manner that denotes inferiority because of race, color, national origin, or gender;
- subjecting any individual to incidents of racial ethnic or sexual harassment, the creation of a hostile work environment, and a disproportionate burden of environmental health risks on minority communities.

*Id.* 22-23.

The Implementation Plan acknowledges that the DFA does not provide direct services to clients, so the DFA recognizes that its compliance with Title VI and Title IX rests principally in ensuring that notices of grant opportunities are available to all applicant organizations and that once organizations receive funding, the DFA must ensure that they comply with the statutes. *Id.* 23.

#### **4. Complaint Procedures**

The DFA distinguishes between in-house complaint procedures and the complaint procedures available to subrecipients. *Id.* 26.

##### **a. Internal DFA Complaints**

Complainants who have grievances against the DFA or a component of the DFA may file an internal complaint with a division manager, the director of human resources, the deputy commissioner for operations, or the commissioner. *Id.* A complainant may also file an external complaint against the DFA with the Tennessee Human Rights Commission or with the “Regional Division of the U.S. Office for Civil Rights in Atlanta, GA.” *Id.*

The Implementation Plan states that the complaint should be in writing, using a standardized complaint form. *Id.* 24, 51 (app. 5 F&A Complaint Documentation Format); *see also* Resp. Attach. S. The complaint form states that it is implementing Title VI and Title IX. The form gathers relevant information such as the complainant’s name and contact information, the description of the complaint, the date of the incident, and information concerning the person or organization that is the subject of the complaint. *Id.* Under the section in the form titled Apparent Basis of the Described Situation, the form contains four boxes for the complainant to check: race, national origin, gender, and visual impairment. *Id.*

According to the Implementation Plan, the DFA may remand a complaint it receives to the appropriate division executive, who then has primary responsibility to investigate the complaint and report findings to DFA’s Title VI and Title IX coordinator and the commissioner. *Id.* A complainant has two levels of appeal from the findings of a division executive, first to the deputy commissioner for operations and then to the commissioner, whose decision is final. *Id.* The Implementation Plan also states that “[a]ccording to federal regulations, a complaint to the U.S. Commission on Civil Rights must be filed no later than 180 calendar days after the alleged discrimination occurred.” *Id.* The DFA has established an internal complaint processing schedule to allow a complainant to meet this cited filing deadline. *Id.* 26-27.

## **b. Subrecipient Complaints**

The DFA requires subrecipients to be able to provide evidence of their nondiscrimination practices, which may include documentation of complaint procedures. “Proof of nondiscrimination may require documentation of standard complaint processes (along with the records resulting from such) for both Subrecipient employees and Subrecipient program beneficiaries.” *Id.* 27.

In the OCJP Administrative Manual, the OCJP directs subrecipients to report complaints, as well as findings of discrimination, to the OCJP, which will then notify the OCR:

In the event of a formal or informal allegation of Civil Rights discrimination, OCJP subrecipients are required to immediately notify their program manager in writing by completing the Civil Rights Complaint Notification form . . . within 45 days. Subrecipients are also required to report, in writing, the status of any ongoing investigations to OCJP. . . . Upon receipt of the Civil Rights Complaint Notification form, OCJP will notify the Office for Civil Rights . . . .

Resp. Attach. T. The Civil Rights Complaint Notification form has information on where to send the form when it is complete, and it requests information about the subrecipient, the complainant, and others involved with the complaint. Resp. Attach. U. The form also solicits a description of the complaint, the date of the incident, and the complainant’s status as either an employee or beneficiary. *Id.* Under the section in the form titled Apparent Basis of the Described Situation, the form has the following boxes to check: race, sex, color, age, disability, national origin, religion, and limited English proficiency. *Id.* The form also inquires whether the complaint may be pending in another grievance process at either the federal or state level. *Id.*

The DFA noted that “[a]t the beginning of the fiscal year [2011] there were no Title VI or Title IX complaints in inventory, and there were none received.” Resp. Attach. J. at 30.

## **5. Training**

The OCJP provides online Title VI training for all of the staffs of subrecipients. Resp. par. 10. The OCJP’s online training includes Power Point slides on Title VI and a link to a Title VI video produced by DOJ’s Civil Rights Division. Resp. Attach. O. The online training program also includes a link to the training materials that the OCR has posted on its website, which includes detailed information on the laws that apply to OCJP’s subrecipients and the obligations that state administering agencies have to monitor subrecipients. *See* Title VI Compliance and Training for

OCJP Subrecipients, <http://www.tn.gov/finance/rds/ocjp/titleVI.shtml> (last visited Aug. 10, 2011).

The OCJP required grant project directors to complete the Title VI online training program in August 2011 and print a certificate attesting to completion of the course, which project directors are to retain in their files. Resp. para. 10; Resp. Attach. P. (Memorandum from William J. Scollon, Director, OCJP, to OCJP Subrecipients (Aug. 1, 2011)). New project directors must complete the online training within ninety days of being hired. *Id.*; *see also* Resp. Attach. T. The DFA stated that civil-rights training may also be part of any onsite meetings with subrecipients. Resp. para. 10. On May 31, 2012, the DFA e-mailed a notice to all DFA employees, requiring them to complete Title VI training by June 30, 2012. Resp. Attach. Q.

Other than the link to OCR's online training programs, the DFA provided no information about training it provides to employees on the Equal Treatment Regulation or federal civil rights laws other than Title VI or Title IX.

## **6. Faith-Based Organizations**

### **a. Evaluation Process and Funding History**

The DFA stated that its policy on faith-based organizations is consistent with Executive Order 13279 and the Equal Treatment Regulation, encouraging faith-based organizations to apply for all grant programs for which they are eligible:

Faith-based and community organizations will be considered for awards on the same basis as other eligible applicants, and if they receive assistance awards, will be treated on an equal basis with all other grantees in the administration of such awards. No eligible applicant or grantee will be discriminated against on the basis of its religious character or affiliation, religious name, or the religious composition of its board of directors or persons working in the organization.

Resp. para. 14.

The DFA stated that it makes grant awards based on the statutory requirements of each funding program, and it employs a review team to score each application based on objective criteria. *See* Resp. Attach. X. (OCJP—Application Review Form). “There is no weighting for or against faith-based organizations.” *Id.*

In FY 2011, under the JAG program, the DFA funded two faith-based organizations<sup>3</sup> and declined to fund two faith-based organizations. In FY 2012, the DFA did not receive any applications for JAG funding. Resp. para. 18.

In FY 2011 and FY 2012, the DFA had no open solicitations for funding under the RSAT program or the Sexual Assault Services Program (SASP), so no faith-based organizations applied for funding under either program. Resp. paras. 20-21, 30-31.

In FY 2011 and FY 2012, the DFA had no open solicitations for funding under the VOCA, so no faith-based organizations applied for funding; however, the DFA continued to fund four faith-based organizations through multi-year contracts that ended on June 30, 2012.<sup>4</sup> Resp. paras. 24-25.

In FY 2011 and 2012, the DFA had no open solicitations for funding under the STOP grant program, so no faith-based organizations applied for funding; however, the DFA continued to fund one faith-based organization through a multi-year contract which ended on June 30, 2012.<sup>5</sup> Resp. paras. 27-28.

Based on the DFA's policies affecting faith-based organizations, evidence of its award process, and its recent history of funding faith-based organizations, there is no basis to question the DFA's compliance with the Equal Treatment Regulation's requirement to treat faith-based organizations equitably in the funding process. *See* 28 C.F.R. §§ 38.1(a), (e) .2(a), (e).

#### **b. Certificate of Exemption for Hiring**

Following DOJ's precedent on the application of the Religious Freedom Restoration Act of 1993 to faith-based recipients, the DFA has, at least on one occasion, allowed a funded faith-based organization to claim an exemption from applicable federal civil rights laws that would otherwise prohibit employment discrimination based on religion. The subrecipient filed with the OCJP a Certificate of Exemption for Hiring Practices on the Basis of Religion, attesting that it would not discriminate on the basis of religion in the delivery of services or benefits, that it would separate in time or location from the federally assisted program any inherently religious

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<sup>3</sup> The subrecipients were (1) The Next Door, Inc., of Nashville, Tenn., which applied for and received \$75,000, and (2) Lipscomb University of Nashville, Tenn., which applied for \$97,470 and received \$99,900.

<sup>4</sup> The subrecipients were (1) Catholic Charities of East Tennessee, Inc., of Knoxville, Tenn. (\$39,709 in both FY 2011 and FY 2012); (2) Catholic Charities of Tennessee, Inc., of Nashville, Tenn. (\$87,320 in both FY 2011 and FY 2012); (3) United Methodist Urban Ministries of Clarksville, Tenn. (\$57,738 in both FY 2011 and FY 2012); and (4) Victims to Victory, Inc., of Memphis, Tenn. (\$199,613 in both FY 2011 and 2012).

<sup>5</sup> The subrecipient was United Methodist Urban Ministries of Clarksville, Tenn. (\$6,650 in both FY 2011 and FY 2012).

activities, and that “employing individuals of a particular religion is important to its religious exercise; and that having to abandon its religious hiring practice in order to receive the federal funding would substantially burden its religious exercise.” Resp. Attach. G.

## **7. Language Access**

The OCR commends both the DFA for issuing its own language-access policy (Resp. Attach. J at 47 (app. 4)), and the OCJP for implementing monitoring procedures to assess the language-access services of subrecipients. Resp. Attach. T. In OCJP’s Administrative Manual, the OCJP succinctly states the requirements subrecipients have under Title VI and related statutes to serve LEP persons and directs subrecipients for technical assistance to the federal interagency website on language-access issues, [www.lep.gov](http://www.lep.gov). *Id.*

The Certification of Regulations Compliance requires subrecipients to attest that they have a language access plan in accordance with Title VI. Resp. Attach. C. at 1.

The civil rights checklist in the Guide includes instructions to assist monitors in assessing whether a subrecipient is providing services to LEP persons. “Has the agency documented the process it has in place to ensure that LEP clients are provided meaningful access to services? Does the agency have a process in place for reaching out to the LEP community? If volunteers are used, note credentials and any training.” Resp. Attach. E. (OCJP Monitoring Guide for Civil Rights para. 8) (citations omitted).

As noted previously, the OCJP’s Civil Rights Complaint Notification form, which subrecipients are to use to report complaints, includes a check-box to indicate complaints based on LEP status. Resp. Attach. U.

## **8. Employment Demographics**

The Implementation Plan contains data on the demographics of DFA’s workforce in broad job categories, cross-classified by race, national origin, and sex. Resp. Attach. J. at 16-19. At the time of the Implementation Plan’s publication, the DFA reported that it had twenty top administrative positions. *Id.* 14. Aside from one vacancy, all the incumbents were White. *Id.* Based on this preliminary data, the OCR may elect to review the EEOP Short Form from the DFA more closely; but at this time, the OCR will defer this inquiry, as the DFA’s employment practices are beyond the scope of this Compliance Review.

## **9. Methods of Administration**

The DOJ has added a new special condition to many of the grant programs that the OCJP administers, requiring state administering agencies to provide a written statement, known as Methods of Administration (MOA), to describe its procedures to ensure the compliance of subrecipients with federal civil rights obligations. The language of the special condition is as follows:

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

On August 8, 2012, the DFA submitted to the OCR its MOA. Letter from William Scollon, Director, OCJP, to OCR (Aug. 8, 2012) (on file with the OCR). In a more condensed form, the DFA's MOA presented much of the same information that the DFA provided to the OCR in response to the OCR's May 16, 2012, Data Request. Consequently, the OCR's recommendations (see *infra* Part C.) address the sufficiency of the DFA's MOA.

### **C. Recommendations**

#### **1. General Observations**

Among the states, the State of Tennessee, through the Tennessee Human Rights Commission, has one of the most vigorous enforcement programs for Title VI. The work of the Commission is apparent in the monitoring practices of the DFA and OCJP, which include the development of checklists and other documentation related to the compliance of subrecipients, the adoption of complaint procedures, and the provision of training to staff and subrecipients on civil rights matters. All of these are commendable achievements. With the state's emphasis on Title VI compliance, and to a lesser extent on Title IX compliance, the DFA has a tendency to conflate compliance with Title VI with compliance with all of the other applicable federal civil rights laws.

This tendency is apparent in three major areas related to civil rights compliance: complaint processing, monitoring, and training.

**a. Complaint Processing**

The OCR has concerns with the DFA's internal complaint process, not only as it applies to Title VI and Title IX, but also as it applies to other federal civil rights laws. Given that the DFA has stated that it provides no direct services, it is hard to imagine a scenario under which a complainant would file an internal Title VI complaint against DFA. In addition, based on the grant programs that OCJP administers, it is difficult to imagine a situation in which a complainant, either as an employee or as a beneficiary of a federally assisted educational program, would have a Title IX claim against OCJP.

The internal complaint process also contains inaccurate information. The process provides for a complainant to file an external complaint with a regional civil rights office in Atlanta or with the U.S. Commission on Civil Rights. The reference to a civil rights office in Atlanta is puzzling, as the Justice Department has no such office. The OCR is also not aware of any function that the U.S. Commission on Civil Rights has in investigating Title VI or Title IX complaints.

The internal complaint form (Resp. Attach. S.) is misleading. Title VI prohibits discrimination based on race, color, and national origin in federally assisted programs; Title IX prohibits discrimination on the basis of sex in federally assisted educational programs. Title IX does contain a provision that prohibits recipients of financial assistance from denying admission to an educational program based on blindness or impaired vision, but it does not contain the remedies that Congress subsequently made available to aggrieved parties with disabilities under Section 504. *Compare* 20 U.S.C. § 1684 *with* 28 C.F.R. pt. 42, subpt. G. Consequently, complaints alleging discrimination based on blindness, even in educational programs, are usually treated under Section 504. Nonetheless, the complaint form invites the complainant to check one of the following boxes as the basis for a complaint: race, national origin, gender, and visual impairment. The form's complaint options do not include color, which is a protected class under Title VI.

The DFA's internal complaint process does not provide for complaints from all of the applicable federal civil rights laws. Under the Safe Streets Act and VOCA, a complainant may have a claim, either in employment or in the delivery of services, based on race, color, national origin, religion, or sex; under VOCA and Section 504, a complainant may have a claim, either in employment or in the delivery of services, based on disability; and under the Age Act, a complainant may have a claim based on age in the delivery of services. As the DFA does not directly provide services, one would expect that any claims under these statutes would be limited

to employment discrimination. Does the internal complaint process address claims under these statutes? Are DFA employees aware that they have the option to file an administrative discrimination claim directly with the OCR?

The OCR recommends that the DFA consult with its counsel and revise the internal complaint procedures.

### **b. Monitoring**

The DFA has commendable monitoring practices when it comes to Title VI; however, it does not appear to exercise the same diligence in monitoring subrecipients' compliance with all of the other applicable federal civil rights laws. For example, the Guide prompts monitors to check whether subrecipients under HHS' FVS program are providing services to people with disabilities. Given that Section 504 applies to all federally assisted programs, why does this inquiry not apply to all the federal programs that DFA administers? There was no information that the DFA provided that indicated that in addition to race, color, and national origin, monitors inquire about the compliance of all subrecipients with federal laws that prohibit discrimination based on sex, religion, disability, and age. Moreover, the DFA did not provide information on whether monitors make inquiries to determine whether subrecipients are in compliance with the Equal Treatment Regulation.

### **c. Training**

The same defect that applies to the complaint and monitoring processes exists in the DFA's civil rights training program, which concentrates exclusively on compliance with Title VI. The OCR commends the DFA's work in providing excellent training opportunities for both its staff and subrecipients on Title VI. The training program, however, does not address all of the applicable federal civil rights laws. On OCJP's website for training on Title VI, there is a link at the bottom of the page to OCR's training videos on civil rights compliance issues. The OCR recommends that the OCJP rely more on the comprehensive training resources posted on the OCR's website.

## **2. Technical Corrections**

In light of the foregoing review of the DFA's compliance materials, the OCR offers the following suggested technical revisions.

**a. Grant Contract**

Although the catch-all phrasing of the nondiscrimination provision in the Grant Contract states that subrecipients have an obligation to abide by all applicable federal civil rights laws, the OCR is concerned that the nondiscrimination language may not provide adequate notice to DOJ subrecipients of the civil rights obligations that they may incur under DOJ program statutes and other federal regulations. Many of these statutes do appear in Chapter XXII of the OCJP's Administrative Manual, but it is unclear whether subrecipients actually receive notice of their responsibilities under these laws in the grant-making process.

**b. Administrative Manual**

The DFA should revise Chapter XXII of the OCJP's Administrative Manual, refining the explanation of each statute's scope and adding citations to the Equal Treatment Regulation and the related executive orders. *See supra* Part B.1. OCJP should delete the reference to disability in the instructions in the Administrative Manual regarding a subrecipient's obligation to submit adverse findings of discrimination to the OCJP or the OCR, as the submission requirement does not include adverse findings based on disability. *See supra* Part B.2.

**c. Certification**

The DFA should revise the Certification, which incorrectly ties the subrecipient's obligation to submit an EEOP to the OCR based on the cumulative award amount of one million dollars in an eighteen-month period. *Id.*

**d. Guide**

The DFA should revise the Guide's Definitions to address the previously discussed deficiencies. *See supra* Part B.3.c.

**D. Findings**

As the DFA and the OCJP already have in place many procedures to ensure the compliance of subrecipients with the federal laws that the OCR enforces, the OCR finds that with the implementation of the recommendations in this Report, they will ensure that they are in substantial compliance with those laws. The OCR requests that the DFA responds to this Compliance Review Report in writing, noting in particular its plans to implement the Report's recommendations.

Mark Emkes, Commissioner  
Tenn. Dep't of Fin. & Admin.  
September 10, 2012  
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If you have any questions, please contact Senior Counsel George Mazza at [redacted].

Sincerely,

/s/ Michael L. Alston

Michael L. Alston  
Director

cc: William Scollon, Director  
OCJP