



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

December 16, 2014

Commissioner Christopher E. Finch
Virgin Islands Department of Human Services
1303 Hospital Ground
Knud Hansen Complex, Building A
St. Thomas, Virgin Islands 00802

Re: Compliance Review Report for the V.I. Dep't of Human Servs.
Docket No. 12-OCR-0494

Dear Commissioner Finch:

On March 14, 2014, the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) initiated a compliance review of the Virgin Islands Department of Human Services (DHS), as part of our compliance review of all State Administering Agencies, in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the DHS' compliance with applicable federal civil rights laws along with the DHS' monitoring procedures for ensuring the compliance of DOJ-funded subrecipients [hereinafter referred to as "subrecipients"] with these laws. Of particular interest to the OCR was the DHS' implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter referred to as "Equal Treatment Regulations"].

On August 28, 2014, the OCR conducted an onsite visit to the DHS' offices in St. Croix to meet with Assistant Commissioner Carla Benjamin and to conduct a training program for Ms. Benjamin and other DHS staff on the federal civil rights laws that the OCR enforces. The OCR would like to thank Ms. Benjamin for assisting OCR attorney Shelley Langguth during her onsite visit.

Based on the DHS' responses to our data request and the information that the OCR gathered during our onsite visit, the OCR sent the DHS a draft Compliance Review Report on November 5, 2014. In a December 13, 2014, e-mail to Ms. Langguth, Ms. Benjamin indicated that the DHS does not have any factual corrections to the draft report.

In regard to the limited scope of our review, the OCR concludes that the DHS has taken steps to substantially comply with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about whether the DHS has adequate complaint procedures in place to respond to discrimination complaints from employees and beneficiaries of subrecipients, whether it is sufficiently notifying and training its subrecipients on the federal civil rights laws that the OCR enforces, and whether it is sufficiently monitoring for compliance. The following Compliance

Review Report includes recommendations for improving the DHS' methods for ensuring the civil rights compliance of subrecipients.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines the DHS' 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 DHS' 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 DOJ are responsible for certifying that contractors and subrecipients under DOJ grant programs comply with applicable federal civil rights laws. In reviewing the DHS' general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the DHS used the following four tools: (1) standard assurances; (2) onsite visits and other monitoring methods; (3) training programs and technical assistance; and (4) procedures for receiving, investigating, and resolving complaints alleging discrimination.

1. Standard Assurances

The DHS currently administers subawards under one DOJ grant program, the Sexual Assault Services Formula Grant Program (SASP) authorized by the Violence Against Women Act of 1994, as amended, and funded by the DOJ's Office on Violence Against Women (OVW). In the DHS' June 20, 2014, Response to the OCR's Data Request [hereinafter referred to as "Data Response"] and during the OCR's onsite visit, the DHS explained that it currently subawards SASP funding to two sexual assault service agencies, the Women's Coalition of St. Croix and the Family Resource Center.

In the DHS' Data Response, it provided the OCR with the subgrant award package that it provides to each of its SASP subrecipients. This subgrant award package includes an Agreement that subrecipients must agree to abide by; paragraph 4 of this Agreement contains the following provision regarding federal civil rights requirements:

The Grantee covenants that no person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this project on account of race, creed, color, sex, religion, national origin or handicap, and further, that information regarding existing architectural barriers in the facility(s) of the Grantee and plans to remove the same will be submitted to the Department of Human Services within thirty (30) days of receipt of this Notification of Grant Award.

Additionally, the subgrant award package contains the OVW's Special Conditions document that is part of the DHS' award package from the OVW. Paragraph 25 of the Special Conditions sets forth

the following provision regarding the Equal Treatment Regulations:

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

2. Onsite Visits and Other Monitoring Methods

In its Data Response, the DHS said that it monitors its SASP subrecipients’ compliance with civil rights requirements as part of its routine onsite monitoring visits of grantees, which the DHS conducts at least once per quarter. During the OCR’s onsite visit, Ms. Benjamin explained that these quarterly onsite visits are not specific to the SASP program, but rather encompass agencies that are receiving funding from a variety of federal and local grant programs administered by the DHS. In its Data Response, the DHS provided the OCR with its “Sub-grantee Monitoring and Evaluation Guide” (Guide), which states that the Guide is a tool to assist DHS staff in reviewing sub-grantees’ compliance with fiscal and program requirements. The Guide lists a number of questions for DHS staff to consider when monitoring subrecipients, including questions inquiring whether a subrecipient has equal opportunity hiring procedures, whether there is evidence that the subrecipient follows equal opportunity guidelines when hiring staff, and whether facilities are easily accessed by individuals with disabilities. The Guide does not contain any other questions relating to the civil rights requirements that the OCR enforces.

During the OCR’s onsite visit, Ms. Benjamin stated that in addition to these routine quarterly onsite visits, she recently conducted an onsite visit of the Women’s Coalition of St. Croix to specifically discuss its SASP grant. Ms. Benjamin said that during this onsite visit she explained the provisions of the Agreement and Special Conditions and told the Women’s Coalition that it could not discriminate.

3. Training and Technical Assistance

According to the DHS’ Data Response, the DHS does not currently provide any training programs or technical assistance projects to SASP subrecipients. As discussed above, Ms. Benjamin has conducted an onsite visit of one of the SASP subrecipients where she generally told the subrecipient that it could not discriminate and reviewed the Agreement and Special Conditions with the subrecipient.

4. Complaint Procedures

In the DHS' Date Response and during the OCR's onsite visit, the DHS said that when a beneficiary applies for benefits or services from the DHS, the beneficiary receives a form discussing the beneficiary's right to a hearing or appeal if the beneficiary believes that he or she was unjustly denied benefits. The DHS provided the OCR with the DHS' Office of Hearings and Appeals' "Fair Hearing Request Summary" that a beneficiary completes to request a hearing if the beneficiary is appealing the denial of benefits or services. During the OCR's onsite visit, Ms. Benjamin said that this includes situations where an individual believes that he or she was denied benefits or services due to discrimination. As for employees of DHS who wish to complain of discrimination by the DHS, Ms. Benjamin said that the DHS' Office of Human Resources has developed procedures to employees to follow in filing a complaint.

The DHS does not have any written procedures in place governing complaints filed by employees or beneficiaries of SASP subrecipients. In the DHS' Data Response, the DHS said employees and beneficiaries of subrecipients may report their concerns to the Virgin Islands Department of Justice, Civil Rights Commission. According to the Virgin Islands Department of Justice's website at <http://doj.vi.gov>, the Civil Rights Commission investigates complaints from individuals alleging discrimination on the basis of race, color, national origin, age, sex, disability, religion, or political affiliation in areas including employment, public accommodation, public services, educational institutions, housing accommodations, and commercial space. During the OCR's onsite visit, Ms. Benjamin told the OCR that she is not aware of any discrimination complaints filed against either of the SASP subrecipients.

B. Monitoring Compliance with Equal Treatment 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.* In evaluating the DHS' equitable treatment of faith-based organizations, the Compliance Review 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.

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

As discussed in Section I.A.1 of this Compliance Review Report, the DHS currently administers SASP awards funded by the DOJ's OVW. Based on the information contained in the OVW's fiscal year 2014 funding solicitation for the SASP, available at www.ovw.usdoj.gov/closed-solicitations.htm, the OCR understands that SASP funds may be used by state administering agencies to fund rape crisis centers and other nonprofit, nongovernmental organizations that provide core services, direct intervention, and related assistance to victims of sexual assault.

In its Data Response and during the OCR's onsite visit, the DHS said that there are only two sexual assault services agencies servicing the Virgin Islands, the Women's Coalition of St. Croix and the Family Resource Center on St. Thomas. Since 2009, the DHS has notified the Women's Coalition of St. Croix and the Family Resource Center via email of the SASP funding opportunities, and has

awarded each of these agencies fifty percent of its SASP awards. The DHS said that there are no faith-based organizations in the Virgin Islands that provide sexual assault services funded by the SASP program.

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

As discussed in Section I.A.1 of this Compliance Review Report, the OVW's Special Conditions, which the DHS provides to SASP subrecipients at the time of award, contain a paragraph discussing the Equal Treatment Regulations. As of the time of the OCR's onsite visit, the DHS had met with one of its SASP subrecipients, the Women's Coalition of St. Croix, to discuss the information contained in the Special Conditions. The DHS does not otherwise provide any training to employees or subrecipients on the Equal Treatment Regulations.

II. Recommendations

The DHS currently has some procedures in place for monitoring the civil rights compliance of its SASP subrecipients, such as referencing some of the prohibited forms of discrimination and the Equal Treatment Regulations in the Agreement and Special Conditions provided to subrecipients, and inquiring about a few civil rights issues during quarterly onsite monitoring visits. To strengthen the DHS' monitoring efforts, the OCR offers the following recommendations: (1) develop written complaint procedures for addressing discrimination complaints from employees and beneficiaries of subrecipients; (2) revise the DHS' standard Agreement with subrecipients to reference the laws that the OCR enforces; (3) specifically monitor for compliance with civil rights requirements during onsite monitoring visits; and (4) develop a training program to train subrecipients on the applicable civil rights requirements.

A. Develop Comprehensive Complaint Procedures

While the DHS has procedures in place for receiving and investigating discrimination complaints from DHS beneficiaries and employees, it does not have any procedures in place for addressing discrimination complaints from employees and beneficiaries of SASP subrecipients. Accordingly, the DHS should adopt a policy for addressing discrimination complaints against SASP subrecipients that includes at a minimum the following elements:

- 1) designating a coordinator who is responsible for overseeing the complaint process;
- 2) notifying employees and subrecipients of prohibited discrimination in funded programs and activities and the DHS' policy and procedures for handling discrimination complaints against subrecipients;
- 3) establishing written procedures for receiving discrimination complaints from employees and beneficiaries of SASP subrecipients;
- 4) a process for investigating the complaint internally, or referring the complaint to the appropriate agency for investigation and resolution, such as the OCR or the Virgin Islands Department of Justice, Civil Rights Commission;

- 5) notifying the complainant that he or she may also file a complaint directly with the OCR at 810 Seventh Street NW, Washington, DC 20531; and
- 6) training DHS program staff on their responsibility to refer discrimination complaints against SASP subrecipients, or potential discrimination issues, to the DHS' complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

Information about the applicable laws, complaint forms, and the investigative process is available at the OCR's website at www.ojp.usdoj.gov/ocr. The OCR is attaching some template complaint procedures that we have developed that the DHS may find helpful in developing its complaint procedures.

B. Revise the DHS' Grant Documents to Reference the Laws that the OCR Enforces

The DHS should revise the civil rights language contained in its Agreement with SASP subrecipients to reference the federal civil rights laws that the OCR enforces and which are binding on SASP subrecipients. The OCR recommends that the DHS replace the existing paragraph 4 of the Agreement with the following language or substantially similar language:

The Grantee will comply with all applicable federal nondiscrimination requirements, which include Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § 1681); the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); the Violence Against Women Act of 1994, as amended (42 U.S.C. § 13925(b)(13)); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); 28 C.F.R. pt. 54 (U.S. Department of Justice Regulations – Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance); and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations). These laws collectively prohibit discrimination based on race, color, national origin, disability, religion, sex, gender identity, and sexual orientation in the delivery of services and employment practices, and based on age in the delivery of services. In accordance with these laws, the Grantee shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.

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 Title VI of the Civil Rights Act of 1964, the Grantee must take reasonable steps to ensure that LEP persons have meaningful access to its programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. The Grantee

is encouraged to consider the need for language services for LEP persons served or encountered both in developing its budgets and in conducting its programs and activities. Additional assistance and information regarding LEP obligations can be found at www.lep.gov.

C. Specifically Monitor for Compliance with Relevant Civil Rights Laws

Currently, while the DHS conducts quarterly onsite monitoring visits of all of its subrecipients under federal and local grant programs, during these visits it only asks a few questions regarding civil rights compliance. At least once per year, the DHS should conduct an onsite visit of SASP subrecipients to specifically monitor for compliance with applicable federal civil rights requirements. The OCR has developed the attached Federal Civil Rights Compliance Checklist that contains questions regarding civil rights compliance which the DHS may find helpful.

D. Train Subrecipients on Federal Civil Rights Laws

Currently, the DHS does not train SASP subrecipients on the federal civil rights laws that the OCR enforces. At a minimum, the DHS should require all SASP subrecipients to review the relevant civil rights training videos found on the OCR's website at www.ojp.usdoj.gov/about/ocr/assistance.htm at least once during a grant cycle. The DHS may also wish to provide in-person training for SASP subrecipients on relevant civil rights requirements, perhaps using the OCR's civil rights PowerPoint presentation as a template.

Conclusion

Except for the concerns we have raised in Section II of this Compliance Review Report, we find that the DHS has taken steps to substantially comply with the federal civil rights laws that the OCR enforces. To help ensure the civil rights compliance of SASP subrecipients, the DHS should immediately take action to implement the Recommendations contained in Section II of this Report. On request, the OCR is available to provide technical assistance to the DHS in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible DHS official contact Ms. Langguth to develop a timeline and goals for implementing the OCR's recommendations.**

On a related matter, as the OCR discussed during our onsite visit, the DHS' SASP award contains a special condition that requires the DHS to develop written Methods of Administration (MOA) summarizing the policies and procedures that it has in place to ensure civil rights compliance of its SASP subrecipients. The DHS was required to submit the MOA to the OCR within 90 days of receiving the SASP award, and the required elements of the MOA are set forth at http://www.ojp.usdoj.gov/funding/other_requirements.htm. The DHS should prepare a MOA summarizing the policies and procedures that it currently has in place and which it intends to develop to address the recommendations contained in this Compliance Review Report. The OCR is available to provide technical assistance to the DHS in developing this MOA.

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Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Langguth at (202) 305-2353.

Sincerely,

/s/ Michael L. Alston

Attachments

cc: Carla E. Benjamin
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