



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

February 24, 2009

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Commissioner William H. Hogan
Alaska Department of Health and Social Services
Office of the Commissioner
350 Main Street, Room 404
P.O. Box 110601
Juneau, Alaska 99811-0601

Re: Compliance Review of the Alaska Department of Health and Social Services
(08-OCR-0472)

Dear Commissioner Hogan:

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 Alaska Department of Health and Social Services (DHSS or Department), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on DHSS' compliance with applicable federal civil rights laws along with DHSS' monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was DHSS' implementation and monitoring of DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations].

On July 22, 2008, the OCR conducted an onsite visit to the DHSS' offices in Anchorage, Alaska to interview DHSS administrators and to conduct a training program for DHSS administrators and program staff about the federal civil rights laws that the OCR enforces. The OCR would like to thank DHSS staff, especially Special Assistant Tara Horton, for assisting OCR attorneys Christopher Zubowicz and Shelley Langguth during their onsite visit.

In regard to the limited scope of this compliance review, the OCR concludes that the DHSS appears to be in substantial compliance 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 DHSS' methods for monitoring the civil rights compliance of subrecipients.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines DHSS' 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 DHSS' implementation of 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 DHSS' general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the DHSS 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 DHSS administers DOJ subawards through its Grants and Contracts Support Team, which is part of DHSS' Division of Finance and Management Services. Before the DHSS releases funds, subrecipients must sign and return a Grant Agreement to the Grants and Contract Support Team, which incorporates various state and federal assurances and certifications for subrecipients. Once a subrecipient agrees to the terms of the Grant Agreement, the DOJ subawards are programmatically implemented by the Department's Office of Children's Services (OCS) and Division of Juvenile Justice (DJJ).

In responding to OCR's data requests, the DHSS provided standard Grant Agreement Appendix B, DHSS Grant Assurances, which appeared to have been revised in February of 2007. In that state assurances document, all applicants must agree to comply with a series of state laws, many of which in turn require compliance with federal law. For instance, in describing various state obligations, the state assurances document summarizes Alaska Admin. Code tit. 7, § 78.130(a), which requires subrecipients to comply with the federal Civil Rights Act of 1964, the federal Americans with Disabilities Act, and the federal Drug-Free Workplace Act of 1988. That assurances document also requires compliance with various unspecified federal and state laws and regulations preventing discriminatory employment practices, as well as Alaska Stat. § 18.80.220, "Unlawful employment practices," which makes it unlawful for an employer to discriminate against a prospective or current employee based on race, religion, color, national

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origin, age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood, or to retaliate against an individual for opposing a discriminatory practice or participating in a proceeding involving an employment discrimination claim.

Subrecipients receiving federal funding also must sign a document summarizing various additional federal assurances and certifications regarding their civil rights obligations; however, the Department does not consistently provide the same federal assurances document to subrecipients. In responding to OCR's data requests, the DHSS provided standard Grant Agreement Appendix E-1, Federal Assurances & Certifications for Subrecipients, which appeared to have been revised in August of 2007. However, the OCS and the DJJ apparently use a similar, yet superseded federal assurances document dated November of 2004. In both versions, Paragraph 6 states that subrecipients and their contractors agree to comply with the applicable nondiscrimination provisions in federal law, including 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); and Executive Order 13279 (equal protection of the laws for faith-based and community organizations).

Appendix E-1 requires subrecipients to forward to 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, sex, or disability. However, the federal assurances document does not require subrecipients to notify the DHSS of any discrimination findings, which reduces the Department's ability to monitor subrecipient compliance with federal civil rights laws. Also, the DHSS notifies subrecipients that they must submit to the OCR either an Equal Employment Opportunity Plan (EEO) or the OJP's Certification Form stating that they are eligible for a full or partial exemption from the EEO requirement. However, it does not appear that subrecipients are also required to submit a copy of the EEO or Certification Form to the DHSS so that the Department can monitor its subrecipients' compliance with DOJ's EEO regulations at 28 C.F.R. §§ 42.301-.308. The federal assurances document also does not require subrecipients to certify that they will provide meaningful access to their services to persons with limited English proficiency (LEP).

In its data response, the DHSS stated that the Department does not require nonprofit grant applicants to obtain federal tax exempt status in order to be eligible to receive funds. Instead, unless additional requirements are imposed by a federal or other funding source as a condition of the award, all applicants for grants awarded by the DHSS must meet the eligibility requirements of Admin. Code tit. 7, § 78.030. Under that provision, an organization is eligible for grant funding if it is (1) incorporated as a nonprofit organization under Alaska or federal law, (2) a

nonprofit subsidiary of an eligible incorporated nonprofit organization, (3) a political subdivision of a state, (4) a state agency, or (5) an Alaska Native Entity.

2. Onsite Visits and Other Monitoring Methods

In DHSS' response to OCR's data requests, the Department stated that it conducts onsite visits to review subrecipient policies and procedures and to ensure that subrecipients are complying with applicable grant assurances. However, several grant program managers noted during interviews with the OCR that there in fact is no Department-wide approach to site visits; rather, compliance monitoring of subrecipients is performed by each division's program or quality assurance staff. In reviewing the grant management practices of the DJJ and the OCS, both of which implement DOJ subawards, the OCR discovered that neither division monitors the extent to which subrecipients satisfy their federal civil rights obligations. Moreover, these divisions placed widely differing emphases on the importance of site visits as a method for monitoring subrecipient practices. Since Fiscal Year 2007, the DJJ has conducted or scheduled site visits to forty-one subgrantees and endeavors to visit each subgrantee once during every grant cycle. During these DJJ site reviews, grant program managers used a site review outline to evaluate various aspects of subrecipient grant operations, including the extent to which staff members receive training and whether there is a need for specific technical assistance. In contrast, a grant program manager working with DOJ subawards through OCS only conducted one site visit during the past year and does not use any written instruments in connection with site reviews.

In its response to OCR's data requests, the DHSS also explained that it does not use any written instruments in monitoring subrecipients. Because the Department has not developed a uniform set of compliance monitoring materials for site visits, such as a checklist, grant program managers are responsible for crafting their own site visit review materials to ensure that DOJ subgrantees comply with applicable state and federal laws, including federal nondiscrimination provisions.

3. Training and Technical Assistance

In its data response, the Department noted that it provides mandatory training to all proposal evaluation committee members in an effort to ensure that they understand their obligation to exercise ethical and unbiased judgment in reviewing grant applications and recommending specific grant awards. However, a grant program manager for OCS' Alaska Children's Trust grant program, which includes federal funds, told the OCR that the Department has provided no training to individuals making award recommendations for that program. In addition, the DHSS takes few steps to educate subrecipients about their duties to comply with applicable federal civil rights laws, as reflected by its lack of any formal training program for subgrantees. Further, while the Department states that it provides technical assistance in response to specific requests from subrecipients, there is no uniform method for educating subgrantees about their ability to obtain such assistance.

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 subrecipients and the DHSS. In its data response, the DHSS explained that all subrecipients are required to have procedures in place for employee complaints and to notify employees of their rights, including providing relevant information to any labor union representative. The Department also asserted in its initial response to the OCR's data request that subrecipient employees and applicants for employment have access to representation through the Alaska Department of Labor regarding employment discrimination issues; however, it appears that the Alaska State Commission for Human Rights (ASCHR) would be the more appropriate forum for employment discrimination complaints against certain subrecipients. The ASCHR is responsible for enforcing the Alaska Human Rights Law, which prohibits discrimination in employment on the basis of race, religion, color, national origin, sex, physical or mental disability, age, marital status, changes in marital status, pregnancy, or parenthood. Alaska Stat. § 18.80.200. In providing supplemental information to the OCR, the DHSS explained that the Director of the Division of Personnel, Department of Administration administers the equal employment opportunity (EEO) program for executive branch departments, including the DHSS. The Division of Personnel EEO staff receives, investigates, and resolves informal complaints of employment discrimination from current or former state employees and applicants for state employment, including DHSS employees and applicants.

In terms of allegations of services discrimination, the DHSS noted in its response to OCR's data requests that the Alaska Administrative Code requires subrecipients to establish procedures for processing complaints alleging services discrimination on the basis of race, religion, color, national origin, age, physical disability, mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood. Alaska Admin. Code tit. 7, § 78.130. It also appears that, in some instances, a beneficiary of a subrecipient may be able to pursue a services discrimination claim through the ASCHR, which investigates alleged discrimination in places of public accommodation on the basis of race, religion, color, national origin, sex, physical or mental disability, age, marital status, changes in marital status, pregnancy, or parenthood. Alaska Stat. § 18.80.200. The ASCHR also enforces the Alaska law that prohibits the state or any of its political subdivisions from refusing, withholding from, or denying a person services because of race, religion, sex, color, national origin, or physical or mental disability. *Id.* § 18.80.255.

The DHSS has no mechanism in place to receive notice of any complaints of employment or services discrimination that are filed by subrecipient employees or beneficiaries in any forum. Rather, grant program managers working with DJJ and OCS subawards explained that there are informal methods for learning about employment and services discrimination complaints. While DJJ program managers have not received notice of any formal discrimination allegations, they would expect a subrecipient to notify the Department about any such complaints in its quarterly

reports or in connection with other monitoring efforts, such as during a site visit. The OCS also would expect a subrecipient to include information about discrimination allegations in its quarterly report.

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.* In evaluating DHSS’ 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.

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

Throughout the Department’s grant award process, the DHSS Grants and Contract Support Team (GCST) collaborates with the individual DHSS divisions that are responsible for managing the grants. When an organization submits a grant application, the GCST reviews it to determine whether it satisfies the grant’s technical specifications. Once GCST finishes that analysis, it forwards all complete applications to the pertinent DHSS division so that program staff can evaluate the merits of each proposal. Often, divisions use different procedures in making their grant award recommendations. For instance, with respect to OCS’ Alaska Children’s Trust (ACT) funds, which include state and DOJ monies, the Department delegates primary grant selection and grant management responsibility to a nonprofit organization. In making specific subaward recommendations involving these ACT funds, the nonprofit uses a committee comprised of at least three nonprofit representatives to evaluate the proposals. In contrast, the DJJ often makes subaward recommendations absent a proposal evaluation committee because it has sufficient funds to recommend that each applicant receive funding. Each division submits its formal funding recommendation to the GCST and the Office of the Commissioner for review and final approval.

While the DHSS places general information about grant opportunities on its Web site, the Department also provides training and technical assistance to potential grant applicants through its Office of Faith-Based and Community Initiatives (OFBCI), which was created in January 2005. The OFBCI holds community funding forums and meetings for faith-based and community organizations, provides training and technical assistance to those groups, and offers specific guidance to organizations about partnering with the federal and state governments. As part of its outreach, the OFBCI emphasizes that faith-based organizations are neither favored nor discriminated against during the grant application or funding process. In its data response, the

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OFBCI noted that it would provide additional training to various faith-based and community groups between August 23, 2007, and February 23, 2009.

While the Department's OFBCI seeks to communicate with faith-based organizations in an effort to encourage them to apply for grants, the DHSS seeks to guard against religious-based discrimination for or against specific applicants by not soliciting information about the nature of a grant applicant. As a result, in responding to OCR's data request for information about DHSS' funding of faith-based organizations in Fiscal Years 2006 and 2007, the Department did not provide information about the total number of faith-based organizations that applied for or received funding. Following OCR's onsite visit, the Department provided the OCR with information about specific DOJ subrecipients for Fiscal Years 2006, 2007, and 2008. Based upon OCR's review of those subawards, it appears that several self-identified faith-based groups received federal funds.

For instance, in Fiscal Year 2008, the Department made DOJ subawards through the OCS and the DJJ. The OCS made awards to twenty subgrantees, including Catholic Community Services. On its Web site, Catholic Community Services states that "it advocates and offers social service opportunities for all Southeastern Alaskans, emphasizing social justice and compassion. We accomplish this mission by fostering the self-sufficiency and dignity of individuals and families affirming diversity in culture, faith and way of life." CCS Juneau – Mission Statement, <http://www.ccsjuneau.org/36,missionstatement> (last visited Nov. 19, 2008).

The DJJ made awards to twenty-nine subgrantees, including Covenant House Alaska and Volunteers of America Alaska, Inc. Covenant House Alaska is part of Covenant House International, which offers the following mission statement:

We who recognize God's providence and fidelity to His people are dedicated to living out His covenant among ourselves and those children we serve, with absolute respect and unconditional love. That commitment calls us to serve suffering children of the street, and to protect and safeguard all children. Just as Christ in His humanity is the visible sign of God's presence among His people, so our efforts together in the covenant community are a visible sign that effects the presence of God, working through the Holy Spirit among ourselves and our kids.

Covenant House – About Covenant House, <http://www.covenanthouse.org/about.html> (last visited Nov. 19, 2008). Volunteers of America Alaska, Inc. is part of Volunteers of America, which explains that it "is a national, nonprofit, faith-based organization dedicated to helping those in need rebuild their lives and reach their full potential." About Us, <http://www.vo.org/Default.aspx?tabid=2864> (last visited Nov. 19, 2008).

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

The OFBCI provides guidance and training to DHSS' Grants and Contracts Support Team, although it does not provide specific training to proposal evaluation committee members or grant program managers about the requirements of the Equal Treatment Regulations. Other than these general measures and the procedures that the DHSS uses to monitor the federal civil rights compliance of its subrecipients, as discussed in Section I.A.2. of this Compliance Review Report, the DHSS does not have any procedures in place for ensuring that funded faith-based organizations comply with the Equal Treatment Regulations and other applicable federal civil rights laws.

II. Recommendations

A. Modify the Civil Rights/Nondiscrimination Provisions in Grant Assurances, Agreements, and Conditions

The DHSS should revise its state and federal assurance documents to provide greater clarity to subrecipients regarding several of their legal obligations. As drafted, the state assurances document expressly references several applicable state civil rights provisions and some but not all applicable federal civil rights laws that are covered in the federal assurances document. Because subrecipients may be obligated to adhere to the more extensive list of federal civil rights statutes detailed in the federal assurances document, the DHSS may wish to reference Admin. Code tit. 7, § 78.130(a), which itself addresses the federal Civil Rights Act of 1964, the federal Americans with Disabilities Act of 1990, and the federal Drug-Free Workplace Act of 1988, and remove specific references to those statutes from the state assurances document. In discussing compliance with Alaska Stat. § 18.80.220, which addresses unlawful employment practices, the DHSS also may wish to include a specific reference to Alaska Admin. Code tit. 7, § 78.120, "Equal employment opportunity," which details subrecipient obligations regarding equal employment opportunity. Specifically, under that provision, subrecipients must post notices setting out the equal employment opportunity provisions of Alaska Stat. § 18.80.220 and must state in employment solicitations that the subrecipient is an equal opportunity provider. Finally, the OCR recommends that the DHSS include a separate reference to Alaska Admin. Code tit. 7, § 78.130, which requires subrecipients to establish procedures for processing services discrimination complaints.

In terms of its federal assurances document, the OCR recommends that the DHSS ensure that all subrecipients are provided the version of Appendix E-1 that was revised in August of 2007. The Department also should add a provision to Appendix E-1 requiring subrecipients to certify that they will provide meaningful access to their programs and activities to LEP persons. As discussed during OCR's onsite training, in June of 2002, DOJ published guidance for its financial aid recipients and state subrecipients about taking reasonable steps to provide

meaningful access to programs and activities for LEP persons in accordance with Title VI and the Safe Streets Act. *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002) (DOJ Guidance). The Department also may wish to add a sentence to Appendix E-1 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. Finally, the OCR recommends that the DHSS replace the provision of Appendix E-1, paragraph 6 regarding faith-based organizations with the following language: “and Ex. Order 13279 (equal protection of the laws for faith-based and community organizations), 28 C.F.R. pt. 38 (U.S. Department of Justice Equal Treatment for Faith-Based Organizations), 45 C.F.R. § 87.1 (Department of Health and Human Services Equal Treatment for Faith-Based Organizations).”

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 DHSS should ensure that each division managing DOJ subawards conducts onsite monitoring of its subrecipients. In addition, the Department 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 DHSS 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). Additionally, the checklist should include questions that evaluate whether the subrecipient is complying with 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.

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

The DHSS does not provide any training to its subrecipients about their civil rights obligations. To ensure that subrecipients are aware of their obligations under applicable federal civil rights laws, such as the obligation to comply with DOJ’s Equal Treatment Regulations, 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 DHSS 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 DHSS with technical assistance in developing civil rights training programs.

D. Develop Comprehensive Complaint Procedures

As previously noted, the Division of Personnel, Department of Administration includes an EEO staff that receives, investigates, and resolves informal complaints of employment discrimination from state employees and applicants for state employment. The ASCHR also provides a forum for resolving discrimination complaints from employees of the DHSS and employees of DHSS subrecipients, as well as complaints from the beneficiaries of DHSS programs and the beneficiaries of DHSS subrecipient programs that are places of public accommodation. Nonetheless, the DHSS has an obligation as a recipient of federal financial assistance to have in place a policy that addresses how it responds to discrimination complaints that it receives not only from its own employees and beneficiaries but also from the employees and beneficiaries of subrecipients. At a minimum, the DHSS complaint policy should include the following elements: designating a coordinator who is responsible for processing discrimination complaints; a process for receiving, evaluating, and forwarding discrimination complaints to the appropriate investigative agency (e.g., the Equal Employment Opportunity Commission (EEOC), the ASCHR, or the OCR); providing written notice to DHSS employees, beneficiaries, and subrecipients about the complaint process; and training DHSS program staff on their obligation to refer allegations of discrimination in subrecipient programs to DHSS' complaint coordinator as soon as the alleged discrimination comes to their attention. The DHSS should be especially mindful that beneficiaries of all subrecipient programs, regardless of whether the subrecipients are characterized as places of public accommodation, have the right to file a discrimination complaint with the OCR. Information about the applicable laws, complaint forms, and the OCR's investigative process is available at OCR's Web site, <http://www.ojp.usdoj.gov/ocr/crc>.

III. Conclusion

Except for the concerns we have raised in Section II of this Compliance Review Report, we find that the DHSS is in substantial compliance with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the DHSS in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible DHSS official contact Attorney Advisor Christopher Zubowicz or Attorney Advisor Shelley Langguth to develop a timeline and goals for implementing OCR's recommendations.**

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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 202.305.9012 or Ms. Langguth at 202.305.2353.

Sincerely,

/S/

Michael L. Alston
Director

cc: Tara Horton, Special Assistant
Alaska Department of Health and Social Services