



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

---

*Washington, D.C. 20531*

**Via Certified Mail**

August 18, 2009

John A. Blackburn, Jr.  
Executive Director  
Arizona Criminal Justice Commission  
1110 West Washington Street, Suite 230  
Phoenix, Arizona 85007

Re: Compliance Review of the Arizona Criminal Justice Commission (09-OCR-0071)

Dear Director Blackburn:

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

On May 6, 2009, the OCR conducted an onsite visit to the ACJC's offices in Phoenix, Arizona, to interview ACJC administrators and to conduct a training program for ACJC administrators and program staff on the federal civil rights laws that the OCR enforces. The OCR would like to thank ACJC staff, especially Deputy Director Karen Ziegler, for assisting OCR attorney Shelley Langguth during her onsite visit.

Based on the ACJC's responses to our data request and the information that the OCR gathered during our onsite visit, the OCR sent the ACJC a draft Compliance Review Report on June 9, 2009. During an August 12, 2009, telephone conversation with Ms. Langguth, Ms. Ziegler said that the ACJC does not have any factual corrections to the draft report.

In regard to the limited scope of our review, the OCR concludes that the ACJC has taken steps to substantially comply with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about whether the ACJC has adequate complaint procedures in place to respond to discrimination complaints from beneficiaries and employees of subrecipients, and

whether it is sufficiently training and educating its subrecipients on applicable federal civil rights laws. The following Compliance Review Report includes recommendations for improving the ACJC's methods for monitoring the civil rights compliance of subrecipients.

## **Compliance Review Report: Overview and Recommendations**

### **I. Overview**

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

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

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

##### **1. Standard Assurances**

According to our records, the ACJC currently administers numerous grant awards from the OJP's Bureau of Justice Assistance (BJA), Bureau of Justice Statistics (BJS), National Institute of Justice (NIJ), and Office for Victims of Crime (OVC). During the OCR's onsite monitoring visit, ACJC staff explained that ACJC program managers and grant coordinators administer and monitor DOJ subawards.

Before the ACJC releases funds, subrecipients must sign the ACJC's standard Grant Agreement. During the OCR's onsite visit, ACJC staff provided the OCR with a copy of the current Grant Agreement; paragraph 42 of this Grant Agreement contains the following language regarding civil rights requirements:

The GRANTEE agrees to comply with the non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1964, as amended; 42 USC 3789(d); Title VI of the Civil

Rights Act of 1964, as amended; Section 504, Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972 and the Department of Justice regulations 28 CFR Part 54; The Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, G and I; Department of Justice regulations on disability discrimination 28 CFR Part 35; all applicable state laws of A.R.S. § 41-1436<sup>1</sup>; and Executive Orders 1999-4<sup>2</sup> and 2000-4<sup>3</sup>. These laws prohibit discrimination on the basis of race, color, religion, sex and national origin including Limited English Proficiency (LEP) in the delivery of service.<sup>4</sup> In the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing against the GRANTEE, the GRANTEE will forward a copy of the findings to the Office for Civil Rights, Office of Justice Programs and the COMMISSION.

Additionally, paragraph 44 of the Grant Agreement requires subrecipients to formulate and keep on file an Equal Employment Opportunity Plan (EEO) if required by 28 C.F.R. part 42.302, and to certify that they have forwarded the EEO to the OCR or have submitted a certification to the OCR stating that an EEO is on file or that the subrecipient is exempt from the EEO requirements. This paragraph further states that subrecipients must provide the ACJC with copies of any certifications or correspondence with the OCR regarding the EEO requirement.

In its data response, the ACJC said that subrecipients must also comply with the grant requirements discussed in the ACJC's Grant Management Reference Manual (2004). During the OCR's onsite visit, ACJC staff explained that this Grant Management Reference Manual is located on the ACJC's website, and that the ACJC notifies subrecipients of the existence and location of the Grant Management Reference Manual at the initiation of a grant award. Chapter 14 of the Grant Management Reference Manual, entitled "Equal Employment Opportunity Plan," discusses the EEO requirements contained at 42 C.F.R. part 43.301 *et. seq.*, and lists criteria

---

<sup>1</sup> Ariz. Rev. Stat. Ann § 41-1463 (2009) prohibits employers from discriminating against individuals on the basis of race, color, religion, sex, age, disability, or national origin.

<sup>2</sup> Exec. Order No. 1999-4 (1999) prohibits government contractors and subcontractors from discriminating against any employee or applicant on the basis of race, age, color, religion, sex, or national origin.

<sup>3</sup> Exec. Order No. 2000-4 (2000) states that for purchases of \$25,000.00 or less, when Arizona state agencies are required to obtain three quotes at least one of the quotes shall be solicited from a woman- or minority-owned business.

<sup>4</sup> Please be advised that the federal laws that the ACJC references in this paragraph prohibit discrimination on the basis of race, color, religion, sex, national origin, and disability in the delivery of services and employment practices and on the basis of age in the delivery of services.

that subrecipients should utilize when determining whether they are required to prepare an EEOP and whether they are required to submit an EEOP or certification to the OCR.<sup>5</sup> Chapter 14 also states that subrecipients must forward to the OCR a copy of any finding of discrimination issued against the subrecipient after a due process hearing within the past five years.<sup>6</sup> The Grant Management Reference Manual also contains an EEOP Certification that certain subrecipients are required to complete, certifying either that the subrecipient has completed an EEOP and has it on file for review or that the subrecipient has less than fifty employees and is exempt from the EEOP requirements.<sup>7</sup> During the OCR's onsite visit, ACJC staff stated that subrecipients submit this EEOP Certification to the OCR but not to the ACJC.

During the OCR's onsite visit, the ACJC also provided the OCR with the recent funding announcements that it published for two of its BJA-funded Project Safe Neighborhood (PSN) grant programs, an Anti-Gang Initiative and a Gun Violence Prevention Program. These funding announcements include a paragraph on the EEOP requirements, providing the same information that is contained in Chapter 14 of the Grant Management Reference Manual.<sup>8</sup> Also, the funding announcements contain a paragraph on Civil Rights Certifications, quoting the nondiscrimination provision of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d, and stating that subrecipients must provide assurances that they will not discriminate against any person on the grounds of race, color, religion, sex, national origin, age, or disability in their program or activities, and discussing the enforcement responsibilities of the OCR.<sup>9</sup>

---

<sup>5</sup> Please be advised that this chapter contains some erroneous information regarding the EEOP requirements. The ACJC states that if a subrecipient has received more than one million dollars cumulatively in DOJ funds over an 18-month period it must prepare and submit an EEOP to the OCR; however, only recipients or subrecipients who receive a single award of \$500,000.00 or more are required to submit an EEOP to the OCR. Agencies that do not meet this requirement but receive one million dollars or more in cumulative funding are no longer required to submit an EEOP to the OCR. Additionally, the ACJC says that if a subrecipient is a non-profit organization, educational institution, Indian tribe, or medical institution, or is not receiving a grant of at least \$25,000.00, then the subrecipient does not need to submit a certification to the OCR. However, such recipients claiming a complete exemption from the EEOP requirements are required to submit a certification to the OCR notifying the OCR of the exemption.

<sup>6</sup> Please note that the OCR only requires recipients and subrecipients to submit findings of discrimination issued within the past three years of the initiation of a grant award.

<sup>7</sup> As discussed in footnote 5, this EEOP Certification does not accurately reflect all of the types of subrecipients that are required to submit a document to the OCR certifying that they are partially or completely exempt from the EEOP requirements.

<sup>8</sup> Please see footnote 5.

<sup>9</sup> This section of the funding announcements contains some erroneous legal citations. In citing parts of the federal Code of Federal Regulations, the ACJC often cites "CFT" instead of "CFR." Also, in the last paragraph of this section, the ACJC says that "[s]ome specific forms of discrimination that are prohibited are set out in the OJP program statute's implementing regulations 28 CFR 42.203 and 28 CFT 42.403 section 504." The citation to "28 CFT 42.203 section 504" should be omitted.

## 2. Onsite Visits and Other Monitoring Methods

In the ACJC's data response, it said that the ACJC monitors the civil rights compliance of subrecipients by conducting onsite programmatic reviews. During the OCR's onsite visit, ACJC staff said that grant coordinators try to conduct onsite monitoring visit of each subrecipient every year. The ACJC included in its data response examples of monitoring checklists that grant coordinators use when they conduct onsite monitoring visits of subrecipients of the DOJ-funded Forensic Science Programs Grants and Drug Control and System Improvement Grants. These monitoring checklists contain several questions regarding compliance with federal civil rights requirements. Specifically, the checklists require a grant coordinator to inquire whether a federal or state court or federal or state administrative agency has issued a finding of discrimination against the subrecipient during the last three years on the grounds of race, color, national origin, age, sex, religion, or disability; to inquire whether the subrecipient has submitted an EEOP certification form or an EEOP to the OCR and to review a subrecipient's EEOP (if applicable); and to inquire whether the subrecipient needs any civil rights training or technical assistance regarding its duties to comply with applicable civil rights laws. During the OCR's onsite visit, ACJC staff told the OCR that the ACJC uses a different monitoring checklist for each DOJ grant program, but that the checklists for all of the DOJ grant programs contain these questions regarding civil rights compliance.

The ACJC staff said that the ACJC also requires subrecipients to submit periodic financial and programmatic progress reports, and that these reports do not contain any questions regarding civil rights compliance.

## 3. Training and Technical Assistance

The ACJC said in its data response that it does not provide any formal training or technical assistance to subrecipients on civil rights requirements, and that if a subrecipient needs assistance the ACJC would contact the OCR to provide guidance. During the OCR's onsite visit, ACJC staff said that the ACJC has never had to contact the OCR to request technical assistance for a subrecipient.

## 4. Complaint Procedures

In its data response, the ACJC said that it has agency policies and procedures that govern the processing of discrimination complaints from employees. During the OCR's onsite visit, the ACJC provided a copy of its "2009 Equal Employment Opportunity Policy Statement" which states that the ACJC shall make all personnel transactions without regard to race, color, sex, sexual orientation, religion, national origin, age, veteran status, or disability. The ACJC also provided the OCR with a copy of the ACJC policy and procedures document entitled "Grievance

Process” which sets forth the procedures that employees should follow when raising a claim of discrimination. During the OCR’s onsite visit, ACJC staff told the OCR that the ACJC does not have any direct beneficiaries or program participants.

The ACJC staff with whom the OCR spoke said that they are not aware of whether the ACJC has any written policies or procedures to address discrimination complaints against DOJ subrecipients by employees or beneficiaries. The staff told the OCR that if the ACJC should become aware of a discrimination complaint against a subrecipient, the ACJC would contact the subrecipient to try to resolve the complaint and could also contact its legal counsel.

Based on the OCR’s research, it appears that the Civil Rights Division (CRD) of the Arizona Attorney General’s Office has jurisdiction over complaints alleging discrimination in employment, voting, public accommodations, and housing on the basis of race, color, national origin, religion, sex, disability, retaliation, or age. Accordingly, it appears that employees of ACJC and employees of ACJC subrecipients may file discrimination complaints with the CRD. It further appears that beneficiaries of subrecipients may be able to file discrimination complaints with the CRD as well, depending on whether the program or activity of the subrecipient qualifies as a place of public accommodation. Additionally, the Arizona Governor’s Office has an Office of Equal Opportunity that accepts employment discrimination complaints from state employees, such as employees of the ACJC.

## B. Monitoring Compliance with Equal Treatment Regulations

The purpose of the Equal Treatment Regulations is to ensure that A[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 ACJC’s 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 ACJC currently administers grant programs funded by the OJP’s BJA, BJS, NIJ, and OVC. During the OCR’s onsite visit, ACJC staff told the OCR that the ACJC posts funding solicitations on the ACJC’s website. The ACJC staff said that the ACJC uses peer reviewers from both within the ACJC and external to the ACJC to review grant applications and make funding recommendations to a subcommittee of

ACJC Commissioners. This subcommittee then makes funding recommendations to the full Commission.

According to the information contained in the ACJC's data response and the information that the OCR gathered during its onsite visit, the OCR understands that no faith-based organizations have applied for DOJ funding in Fiscal Years 2006, 2007, 2008, or 2009. The ACJC staff told the OCR that to publicize PSN funding opportunities the ACJC conducted outreach to agencies participating in weed and seed initiatives, including faith-based organizations.

The ACJC said in its data response that nonprofit organizations must have tax exempt status under 26 U.S.C. § 501(c)(3) to be eligible to receive funds. During the OCR's onsite visit, ACJC staff said that this may be required by administrative rules governing ACJC grant programs.

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

In the ACJC's data response, the ACJC said that it ensures that faith-based organizations comply with federal civil rights laws by requiring all subrecipients to sign the Grant Agreement and by conducting onsite monitoring visits of all subrecipients. The ACJC does not currently reference the Equal Treatment Regulations in its Grant Agreement.

## II. Recommendations

The ACJC has some procedures in place for monitoring the civil rights compliance of its subrecipients, such as referencing many of the laws that the OCR enforces in its Grant Agreement and inquiring about compliance with EEOP requirements during onsite monitoring visits. To strengthen the ACJC's monitoring efforts, the OCR offers the following seven recommendations: (1) develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints from employees and beneficiaries of subrecipients; (2) add a citation referring to DOJ's Equal Treatment Regulations to its Grant Agreement; (3) include citations for all of the federal civil rights laws referenced in its Grant Agreement; (4) monitor for compliance with additional federal civil rights laws during onsite monitoring visits or audits; (5) provide training to subrecipients on their obligations to comply with federal civil rights laws; (6) modify the ACJC's explanation of the EEOP requirements currently contained in the Grant Management Reference Manual, EEOP Certification, and funding solicitations; and (7) allow subrecipients to demonstrate nonprofit status by any of the means identified in the DOJ's Equal Treatment Regulations.

A. Develop Comprehensive Complaint Procedures

While the ACJC has written procedures in place for receiving and investigating discrimination complaints from employees, the ACJC does not have any procedures in place for addressing discrimination complaints from employees or beneficiaries of ACJC subrecipients. Accordingly, the ACJC should adopt a policy for addressing discrimination complaints 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 ACJC's policy and procedures for handling discrimination complaints;
- 3) establishing written procedures for receiving discrimination complaints from employees and beneficiaries of ACJC subrecipients;
- 4) referring each complaint to the appropriate agency for investigation and resolution, such as the U.S. Equal Employment Opportunity Commission, the Arizona Attorney General's Office, or the Arizona Governor's Office; or referring the complaint to the OCR, which will review the complaint and work with the ACJC to resolve the complaint;
- 5) notifying the OCR in writing when the ACJC refers a discrimination complaint to another agency or when the ACJC investigates the complaint internally; and
- 6) training ACJC program staff on their responsibility to refer discrimination complaints, or potential discrimination issues, to the ACJC's 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/crc](http://www.ojp.usdoj.gov/ocr/crc). Developing a comprehensive policy for addressing discrimination complaints should be a top priority for the ACJC.

B. Add a Citation Referring to the Faith-Based Regulations to the ACJC's Grant Agreement

The ACJC should modify the nondiscrimination provision in its Grant Agreement, currently paragraph number 42, to include a reference to the DOJ's Equal Treatment Regulations, 28 C.F.R. pt. 38. The ACJC may also want to include a reference to the Equal Treatment Regulations in its funding solicitations for DOJ grant programs. Subrecipients that receive

funding from DOJ components need to be aware of the obligation to comply with these regulations.

C. Include the Legal Citations for the Federal Civil Rights Statutes Referenced in the Grant Agreement

While the ACJC currently references many of the federal civil rights statutes that the OCR enforces in paragraph number 42 of its Grant Agreement, it only provides the legal citation for the Omnibus Crime Control and Safe Streets Act of 1968. The ACJC may wish to include the citations for the other listed nondiscrimination statutes as well so that subrecipients are able to quickly locate them. The nondiscrimination provision of Title VI of the Civil Rights Act of 1964 is at 42 U.S.C. § 2000d; Section 504 of the Rehabilitation Act of 1973 is at 42 U.S.C. § 794; Title II of the Americans with Disabilities Act of 1990 is at 42 U.S.C. § 12132; Title IX of the Education Amendments of 1972 is at 20 U.S.C. § 1681; and the Age Discrimination Act of 1975 is at 42 U.S.C. § 6102. Additionally, the ACJC should include reference to the DOJ's Equal Treatment Regulations at 28 C.F.R. pt. 38, as discussed above. The ACJC may also wish to add a sentence stating that in accordance with federal civil rights laws, the subrecipient shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.

D. Monitor for Compliance with Federal Civil Rights Laws During Onsite Monitoring Visits

The ACJC is taking steps to ensure that ACJC subrecipients are complying with grant requirements by conducting annual onsite monitoring visits and by asking questions regarding compliance with the EEOP requirements and the requirement to submit findings of discrimination to the OCR. However, the ACJC's monitoring checklists do not evaluate a number of additional civil rights requirements that are binding on recipients of federal funding (e.g., whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act, whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act and Title IX of the Education Amendments of 1972, or whether the subrecipient is taking steps to ensure meaningful access to its services to individuals with limited English proficiency). Additionally, the ACJC should ask questions regarding whether subrecipients are 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. The OCR has developed the attached Federal Civil Rights Compliance Checklist that contains relevant questions regarding civil rights compliance; the ACJC may wish to utilize this checklist during onsite monitoring visits or incorporate these questions into its existing checklist.

E. Provide Training to Subrecipients on Their Obligations to Comply with Federal Civil Rights Laws

Currently, the ACJC does not provide any training to DOJ subrecipients on their obligations to comply with federal civil rights laws. To ensure that subrecipients are fully aware of their obligations under federal civil rights laws, such as the obligation to comply with the DOJ's Equal Treatment Regulations, to provide services to LEP individuals, and to submit findings of discrimination to the OCR, the ACJC should provide periodic training programs for its subrecipients specifically on federal civil rights laws. The ACJC should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the ACJC provides the training in person, during a teleconference, or through other means. During the onsite visit, ACJC staff said that the ACJC plans on conducting an upcoming training for subrecipients on the requirements contained in the Grant Management Reference Manual; the ACJC may wish to add a component on civil rights requirements during this training session. The OCR is available to provide the ACJC with technical assistance in developing civil rights training programs.

F. Modify the ACJC's Explanation of the EEOP Requirements

As discussed in Section I.A.1 of this Compliance Review Report, the ACJC's current explanation of the EEOP requirements contained in the Grant Management Reference Manual, EEOP Certification, and PSN funding solicitations provides some erroneous information to subrecipients on the EEOP requirements. The ACJC should revise these documents in accordance with the OCR's comments contained in Section I.A.1. For your information, we are enclosing a copy of the OJP's EEOP Certification Form that discusses the EEOP requirements and which grantees are required to complete if they are claiming a partial or complete exemption from the requirements. The ACJC should modify its existing EEOP Certification to include this information and should explicitly require subrecipients to submit the EEOP Certification to the OCR.

G. Allow Subrecipients to Demonstrate Nonprofit Status by Any of the Means Identified in DOJ's Equal Treatment Regulations

As discussed in Section I.B.1 of this Compliance Review Report, the ACJC requires nonprofit organizations to obtain federal tax exempt status under 26 U.S.C. § 501(c)(3) to be eligible for ACJC funding. Unless 501(c)(3) status is required under the particular grant program (e.g., programs funded under the federal Juvenile Justice and Delinquency Prevention Act) or by state rules or regulations, the ACJC should be mindful that applicants can also demonstrate nonprofit status by any of the following means identified in the DOJ's Equal Treatment Regulations: (1) proof that the Internal Revenue Service recognizes the organization as being tax exempt under 501(c)(3) of the Internal Revenue Code; (2) a statement from a state taxing body or state secretary of state certifying that the organization is a nonprofit organization and that no part of

Executive Director John A. Blackburn, Jr.  
Arizona Criminal Justice Commission  
August 18, 2009  
Page 11

the organization's net earnings may benefit any private shareholder or individual; (3) a certified copy of a certificate of incorporation or similar document establishing nonprofit status; and (4) any of the above, if it applies to a state or national parent organization, with a statement by the state or national parent organization that the applicant is a local nonprofit affiliate. 28 C.F.R. § 38.1(g).

#### Conclusion

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

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  
Director

Enclosures

cc: Deputy Director Karen Ziegler