



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

July 31, 2009

Washington, D.C. 20531

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Clayton H. Wilder
Program Administrator, Office of Criminal
Justice Grants
Florida Department of Law Enforcement
2331 Phillips Road
Tallahassee, FL 32308

Re: Compliance Review of Florida Dep't of Law Enforcement (09-OCR-0058)

Dear Mr. Wilder:

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 Florida Department of Law Enforcement (FDLE or Department), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the FDLE's compliance with applicable federal civil rights laws along with the FDLE's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the FDLE'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 March 10, 2009, the OCR conducted an onsite visit to the FDLE's offices in Tallahassee, Florida to interview FDLE representatives and to conduct a training program for FDLE management and program staff about the federal civil rights laws that the OCR enforces. The OCR would like to thank you for assisting OCR attorney Christopher Zubowicz during his onsite visit.

In regard to the limited scope of this compliance review, the OCR concludes that the FDLE appears to be taking measures to comply 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 of federal financial assistance about their legal obligations regarding applicable federal civil rights laws and the Equal Treatment Regulations, (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 the FDLE'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 FDLE'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 Department'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 FDLE's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the Department 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 FDLE receives DOJ funds through the Edward Byrne Memorial Justice Assistance Grant (JAG) program, the Residential Substance Abuse Treatment for State Prisoners (RSAT) program, the Project Safe Neighborhoods (PSN) program, and the National Criminal History Improvement Program (NCHIP). The Department requires all applicants for these programs to sign a Standard Conditions document, which contains the following language regarding civil rights laws:

33. Equal Employment Opportunity (EEO)

- a. Federal laws prohibit recipients of financial assistance from discriminating on the basis of race, color, national origin, religion, sex, disability, or age in funded programs or activities. All subgrant recipients and implementing agencies must comply with any applicable statutorily-imposed nondiscrimination requirements, which may include 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 Department of Justice Non-Discrimination Regulations 28 CFR Part 42; see Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).

- b. A subgrant recipient or implementing agency must develop an EEO Plan if it has 50 or more employees and it has received any single award of \$25,000 or more from DOJ. The plan must be prepared using the on-line short form at http://www.ojp.usdoj.gov/about/ocr/eeop_comply.htm, must be retained by the subgrant recipient or implementing agency, and must be available for review or audit. The organization must also submit an EEO Certification to FDLE.
- c. If the subgrant recipient or implementing agency is required to prepare an EEO Plan and has received any single award of \$500,000 or more from DOJ, it must submit its plan to DOJ for approval. A copy of the DOJ approval letter must be submitted to FDLE. The approval letter expires two years from the date of the letter.
- d. A subgrant recipient or implementing agency is exempt from the EEOP requirement if it has fewer than 50 employees or if it does not receive any single award of \$25,000 or more from DOJ or if it is a nonprofit organization, a medical or educational institution, or an Indian Tribe. If an organization is exempt from the EEOP requirement, it must submit an EEO Certification to FDLE.
- e. The subgrant recipient and implementing agency acknowledge that failure to comply with EEO Requirements within 60 days of the project start date may result in suspension or termination of funding, until such time as it is in compliance.

- f. In the event a Federal or State court of [sic] Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

34. Americans with Disabilities Act

Subgrant recipients must comply with the requirements of the Americans with Disabilities Act (ADA), Public Law 101-336, which prohibits discrimination by public and private entities on the basis of disability and requires certain accommodations be made with regard to employment (Title I), state and local government services and transportation (Title II), public accommodations (Title III), and telecommunications (Title IV).

* * *

43. Limited English Proficiency

In accordance with Department of Justice Guidance pertaining to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, recipients of Federal financial assistance must take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency (LEP). For more information on the civil rights responsibilities that recipients have in providing language services to LEP individuals, please see the website at <http://www.lep.gov>.

* * *

61. Equal Treatment for Faith Based Organizations

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.

(Standard Conditions, Edward Byrne Memorial Justice Assistance Grant (JAG) Program, FDLE, at 9-10, 14, 16.)

The FDLE requires all applicants to apply for DOJ funding through its SIMON grants management system. When an applicant submits an application, it agrees to abide by the Special Conditions, which become part of the award agreement. To date, no applicant has declined to agree to these assurances. All subgrantees also must submit to the FDLE either the OJP's Equal Employment Opportunity Plan (EEOP) Certification form, which provides information about the extent to which a subrecipient is exempt from the EEOP requirement, or a copy of a letter from the OCR approving their EEOP.

2. Onsite Visits and Other Monitoring Methods

The FDLE, through its Office of Criminal Justice Grants (OCJG), monitors subrecipients of JAG State, JAG Countywide, JAG Direct, PSN, and NCHIP funds every third year.¹ Given that schedule, the Department visits one-third of these subrecipients each year. During a monitoring visit, grant managers within the OCJG's Byrne Unit evaluate all of an agency's open JAG Countywide, PSN, and NCHIP projects, as well as any closed JAG Direct project that the agency had from the prior year. In 2008, the FDLE appeared to review 299 JAG, PSN, and NCHIP grants through its site visit process; in 2009, the Department contemplates reviewing ninety-one such grants. During these reviews, the FDLE uses a monitoring report that elicits information about whether individual subrecipients are in compliance with applicable EEOP and limited English proficiency (LEP) requirements. Where applicable, the Department reviews EEOPs to ensure they comply with the OCR's requirements. The FDLE also conducts desk reviews of its JAG, PSN, and NCHIP grants; it appears to have conducted desk reviews of 266 such grants in 2008 and plans to complete 366 similar desk reviews in 2009.

The Department has a less robust approach to site visits and desk reviews of RSAT program subrecipients. Based on information provided to the OCR during its site visit, the Department

¹ As discussed in Section I.B.1.a. below, the FDLE administers one statewide JAG program and two local JAG programs (JAG Direct and JAG Countywide).

monitored nine RSAT grants in 2007 but did not conduct comprehensive monitoring of any RSAT grants in 2008. In 2009, it plans to conduct one site visit and four desk reviews.

Generally, grant managers also perform ongoing reviews of subrecipients by evaluating the status reports they submit to the FDLE. In addition, the Department receives periodic updates from subrecipients about their own monitoring efforts of organizations to which they allocate federal financial assistance.

3. Training and Technical Assistance

The FDLE provides annual training for JAG subrecipients about program requirements, including those related to equal employment opportunity, EEOPs, the provision of services to LEP persons, and the SIMON grants management system.² For instance, at the Department's 2007 grants management workshop for potential JAG applicants, it (1) provided written materials explaining the EEOP process, (2) provided a checklist to assist applicants in determining their EEOP obligations, and (3) explained a subrecipient's obligations to take reasonable steps to ensure that LEP persons have meaningful access to their programs. The FDLE also provides technical assistance to all subrecipients by telephone and during onsite visits.

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 the FDLE and its subrecipients. The FDLE has an internal discrimination complaint procedure that is available to Department employees and which emphasizes the importance of preventing employment discrimination, harassment, and retaliation. During the OCR's site visit, an administrator explained that a subrecipient employee could file an employment complaint with the FDLE's Office of Human Resources, which likely would review the complaint with the Department's Office of General Counsel and forward it to the Florida Commission on Human Relations (FCHR). The FCHR is responsible for enforcing the provisions of Florida law that prohibit discrimination in employment on the basis of race, color, religion, sex, national origin, age, disability, or marital status. Fla. Stat. § 760.10(1) (2009). A Department or subrecipient employee also can file a charge of discrimination directly with the FCHR or the Equal Employment Opportunity Commission (EEOC).

The FDLE also has a policy for handling services complaints from its beneficiaries. Under the written procedures in that policy, the Department's Office of the Inspector General (OIG) handles the coordination of responses to service complaints. In that role, the OIG receives, evaluates, and attempts to resolve beneficiary complaints while seeking, where appropriate, to

² Subrecipients submit periodic status reports through the SIMON system.

improve the Department's delivery of services. An administrator noted during the OCR's site visit that a subrecipient employee or beneficiary could file a services complaint with the OIG, which would review the complaint and may forward it to the FCHR. In some cases, a Department or subrecipient beneficiary also can file a services complaint directly with the FCHR, which prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, or marital status in providing public accommodations. *Id.* § 760.07.

The FDLE does not require subrecipients to have any policy or procedure regarding the handling of employment or services complaints they receive and does not determine through any of its monitoring efforts whether subrecipients have complaint procedures in place or whether any such procedures are communicated to subrecipient employees or beneficiaries. It also has no mechanism in place to receive notice of any employment or services complaints that are filed against a subrecipient.

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. § 38.2(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 FDLE's equitable treatment of faith-based organizations, the Compliance Review Report focuses on two issues: (1) the review process for making awards to applicant faith-based organizations, and (2) procedures for ensuring that funded faith-based organizations comply with applicable federal civil rights laws.

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

As mentioned above, the FDLE receives JAG, RSAT, PSN, and NCHIP funds. The Department does not require nonprofit applicants to obtain federal tax exempt status in order to participate in any of these programs.

a. JAG program

The FDLE participates in the JAG program, which allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system. The Department's JAG program includes one state and two local subaward components.

State JAG Subawards. The Florida legislature, with the assistance of the FDLE, selects the state agency subrecipients of JAG funds and determines the level of that funding. Once the state legislature agrees on specific subrecipients and award amounts, the FDLE notifies pertinent state

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agencies that they are eligible for JAG funds and requires them to submit a formal request for funding through the SIMON grants management system.

Local JAG Subawards. In distributing local JAG subawards, the FDLE administers a JAG Direct program and a JAG Countywide program. Under the JAG Direct program, the Department makes a limited number of subawards to units of local government. However, the majority of local JAG funds are awarded by counties through the JAG Countywide program. While the FDLE does not control the county subaward process, it encourages each county to use an advisory board to select specific subrecipients, including nonprofit groups and eligible faith-based organizations. Counties require selected applicants to sign county-prepared grant agreements, which are then sent to the Department.³

In some cases, local units of government have subawarded JAG funds to faith-based organizations. In response to the OCR's data request, the FDLE noted that two faith-based organizations, Transformation Ministry of Osceola County and Church of Brotherly Love Social Services, received JAG funds in fiscal year 2008 from the Osceola County Board of Commissioners and the City of Deerfield Beach, respectively.

b. RSAT program

The FDLE also participates in the RSAT program, which assists state and local governments to develop and implement substance abuse treatment programs in state and local correctional detention facilities and to create and maintain community-based aftercare services for offenders. The Department cannot distribute RSAT funds directly to nonprofit organizations. *See Residential Substance Abuse Treatment (RSAT) for State Prisoners Program FY 2008 Formula Grant Announcement, Bureau of Justice Assistance, at <http://www.ojp.usdoj.gov/BJA/grant/09RSATsol.pdf> (last visited May 13, 2009) at 1 ("The state office may award subgrants to state agencies, units of local government, and Native American tribes.")*. However, nonprofit groups are eligible to receive RSAT funds by partnering with, for instance, units of local government to implement specific programs. In response to the OCR's data request, the FDLE noted that one faith-based organization, Pathways for Change (Pathways), received RSAT funds in fiscal year 2008 from the Escambia County Board of Commissioners (Escambia County).

³ The FDLE expects to receive or be apprised of every subrecipient grant agreement that is executed with respect to JAG funds. During the OCR's site visit, the FDLE provided an agreement that the City of Gainesville entered into with the Black on Black Crime Task Force, Inc., for the subaward of JAG funds. Notably, the agreement is silent about many of the federal requirements that apply to the subrecipient, such as its obligations under pertinent civil rights laws. The OCR also reviewed the standard grant agreement for JAG funds between the City of Lynn Haven and Gulf Coast Children's Advocacy Center, Inc. While the subrecipient certifies that it "is being and will continue to be operated in accordance with all Federal or State laws, rules and regulations," there is no language providing specific guidance about which federal laws apply to it. (Edward Byrne Memorial Justice Assistance Grant Standard Contract at unnumbered 2.)

c. PSN program

The FDLE also subawards DOJ funds through the PSN program, which is a nationwide network designed to create safer neighborhoods by reducing gun violence and gun crime, and sustaining that reduction. Consistent with the DOJ's Equal Treatment Regulations, faith-based groups should be encouraged to apply for assistance awards to fund eligible grant activities. *See* Project Safe Neighborhoods (PSN) FY 2008 Grant Announcement, Bureau of Justice Assistance, at <http://www.ojp.usdoj.gov/BJA/grant/08PSNsol.pdf> (last visited May 13, 2009) at 1. A committee formed by the U.S. Attorney's Office for each judicial district selects individual subrecipients, which are then contacted by the Department and monitored by an FDLE grant manager. At this point, no faith-based organizations receive PSN funds from the FDLE.

d. NCHIP program

Finally, the FDLE participates in the NCHIP initiative, which aims to improve safety and security in the United States by enhancing the quality, completeness, and accessibility of criminal history record information and by ensuring the nationwide implementation of criminal justice and noncriminal justice background check systems. Given these goals, which are aimed at assisting state criminal justice systems maintain and share pertinent criminal history information, the program is not designed to include faith-based groups. *See generally* FY 2009 National Criminal History Improvement (NCHIP) Solicitation, Bureau of Justice Statistics, at <http://www.ojp.gov/bjs/pub/pdf/nchip09sol.pdf> (last visited May 13, 2009).

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

In an effort to assess whether the FDLE has procedures in place to ensure that faith-based subrecipients of federal financial assistance comply with applicable civil rights laws, the OCR conducted an onsite visit to Pathways, which is a faith-based, nonprofit, tax-exempt organization based in Pensacola, Florida. Pathways is a department of Baptist Hospital, Inc. (Baptist Hospital), a Florida nonprofit, tax-exempt organization doing business as Christian Counseling Center. The FDLE subawards RSAT funds to Escambia County, which in turn further subawards funds to Pathways. During the grant period of August 1, 2008, through July 31, 2009, Pathways received \$67,000 through the RSAT program.⁴ The OCR will issue a report regarding the Pathways program under separate cover at a later date.

II. Recommendations

The FDLE already has in place a number of procedures for monitoring the civil rights compliance of its subrecipients. To strengthen the Department's monitoring efforts and its

⁴ In its program materials, Pathways incorrectly suggests that RSAT is a state grant program.

inclusion of faith-based organizations in the grant funding process, the OCR makes the following four recommendations: (1) modify the civil rights/nondiscrimination provisions in its standard conditions document, (2) refine its compliance checklist, (3) refine its training to subrecipients regarding their obligations to comply with federal civil rights laws, and (4) develop a comprehensive policy for addressing discrimination complaints involving subrecipients.⁵

A. Modify the Civil Rights/Nondiscrimination Provisions in Its Standard Conditions Document

The OCR commends the FDLE for including provisions in its Standard Conditions document that accurately describe the obligations that apply to recipients of federal financial assistance. In an effort to further refine its assurances document, the OCR recommends that the Department note in Paragraph 33.a. that, in addition to subgrant recipients and implementing agencies, all contractors must comply with applicable statutorily-imposed nondiscrimination requirements. In Paragraph 33.f., the OCR recommends that the Department require a recipient to forward a copy of any finding of discrimination to it and the OCR. The FDLE also may 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. Finally, the FDLE should encourage local units of government to use similarly comprehensive provisions in their own grant agreements with subrecipients; otherwise, the service providers that receive federal financial assistance may not have sufficient notice of their obligations under federal law.

B. Refine Its Compliance Checklist

The FDLE also is to be commended for its general efforts to monitor subrecipients through onsite visits and desk reviews, as well as for its use of a compliance checklist. As part of its responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the Department should continue to ensure that it conducts onsite monitoring of its subrecipients and should improve the quality of its monitoring of subrecipients receiving RSAT funds. Going forward, it should refine its checklist to ensure that it evaluates the various civil rights requirements that apply to all DOJ-funded subrecipients (e.g., whether the subrecipient has findings of discrimination to report to the FDLE 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 and Title IX of the Education Amendments of 1972). Additionally, the

⁵ During the OCR's site visit, an FDLE administrator inquired about whether the Department should change its SIMON grants management system to include information about which applicants and subrecipients are faith-based organizations. The OCR recommends that the Department make this system modification, which would allow it to assess in a comprehensive manner the extent to which its various DOJ-funded programs include faith-based applicants and subrecipients.

checklist should include questions that evaluate whether the subrecipient is complying with the 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. In an effort to assist the FDLE in refining its checklist, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, which is enclosed for the Department's review.

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

While the FDLE is making a concerted effort to provide training to JAG program applicants and subrecipients, it should ensure that subrecipients in all DOJ-funded programs receive training about their obligations under applicable federal civil rights laws, such as to provide services to LEP individuals and to have procedures in place to receive and evaluate complaints alleging discrimination from employees and beneficiaries. The OCR is available to provide the FDLE with technical assistance in expanding its civil rights training programs.

D. Develop Comprehensive Policy for Addressing Discrimination Complaints Involving Subrecipients

As previously noted, the FDLE has procedures in place regarding its response to discrimination complaints from its own employees and beneficiaries, and the FCHR and the EEOC provide additional forums for resolving certain discrimination complaints. However, its current procedure is deficient for services complaints from subrecipient beneficiaries because the FCHR only has jurisdiction over public accommodation complaints. The Department has an obligation as a recipient of federal financial assistance to have in place a policy that comprehensively addresses how it responds to employment and services discrimination complaints that it receives from the employees and beneficiaries of subrecipients. Specifically, it should ensure that it has a policy for addressing discrimination complaints involving subrecipients that includes at a minimum the following elements:

- designating a coordinator who is responsible for overseeing the subrecipient complaint process;
- notifying subrecipients of prohibited discrimination in funded programs and activities and the FDLE's policy and procedures for handling discrimination complaints involving subrecipients;
- establishing written procedures for receiving discrimination complaints from subrecipient employees and beneficiaries;

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- referring each complaint to the appropriate agency for investigation and resolution, such as the FCHR or the EEOC; or referring the complaint to the OCR, which will review the complaint and work with the FDLE to resolve it;
- notifying the OCR in writing when the FDLE refers a discrimination complaint to another agency or when the Department investigates the complaint internally; and
- training FDLE program staff on their responsibility to refer discrimination complaints or potential discrimination issues involving subrecipients to the Department'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 can be found at <http://www.ojp.usdoj.gov/ocr/crc>.

III. Conclusion

We find that the FDLE should implement the OCR's recommendations to ensure substantial compliance with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the FDLE in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible FDLE official contact Attorney Advisor Christopher Zubowicz to develop a timeline and goals for implementing the OCR's recommendations.**

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.

Sincerely,

/S/

Michael L. Alston
Director

Enclosure