



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

July 9, 2009

Washington, D.C. 20531

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Ms. Trula Motta
Director, Domestic Violence Program Office
Florida Department of Children and Families
1317 Winewood Blvd., Bldg. 3, Suite 101
Tallahassee, FL 32399-2168

Re: Compliance Review of Florida Dep't of Children and Families (09-OCR-0059)

Dear Ms. Motta:

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 Children and Families (DCF or Department), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the DCF's compliance with applicable federal civil rights laws along with the Department's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the DCF'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 11, 2009, the OCR conducted an onsite visit to the DCF's offices in Tallahassee, Florida to interview DCF representatives and to conduct a training program for DCF management and program staff about the federal civil rights laws that the OCR enforces. The OCR would like to thank Ms. Mary L. Marotta, LCSW, Grants Administrator, 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 DCF 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 about their legal obligations regarding applicable federal civil rights laws, (2) monitoring of subrecipients, (3) training for subrecipients, (4) complaint procedures for responding to certain discrimination allegations, and (5) efforts to make subawards to nonprofit organizations that may not be tax exempt under 501(c)(3) of the Internal Revenue Code. The following Compliance Review Report includes recommendations for improving the DCF'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 DCF'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 DCF'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 DCF receives DOJ funds through the Violence Against Women Act (VAWA) Services • Training • Officers • Prosecutors (STOP) program. In order to receive VAWA funds, a successful applicant must sign a standard contract, which contains the following language:

I. THE PROVIDER AGREES:

* * *

M. Civil Rights Requirements

1. Not to discriminate against any employee (or applicant for employment) in the performance of this contract because of race, color, religion, sex, national origin, disability, age, or marital status in accordance with Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act of 1990; or the Florida Civil Rights Act of 1992, as applicable[.] Further, the provider agrees not to discriminate against any applicant/client or employee in

service delivery or benefits in connection with any of its programs and activities in accordance with 45 CFR Parts 80, 83, 84, 90, and 91, Title VI of the Civil Rights Act of 1964, or the Florida Civil Rights Act of 1992, as applicable and CFOP 60-16. These requirements shall apply to all contractors, subcontractors, subgrantees or others with whom it arranges to provide services or benefits to clients or employees in connection with its programs and activities.

2. To complete the Civil Rights Compliance Checklist, CF 946, in accordance with CFOP 60-16 and 45 CFR Part 80. This is required of all providers that have fifteen (15) or more employees.
3. Subcontractors who are on the discriminatory vendor list may not transact business with any public entity, in accordance with the provisions of 287.134, F.S.

(Revised Standard Contract Between DCF and Florida Prosecuting Attorney's Association, Inc. (Apr. 2009) at 3.) The standard contract also contains general language that the subrecipient "shall be knowledgeable of and fully comply with all applicable federal . . . laws, rules, regulations and program instructions that do or may affect the subject areas of this contract."¹ *Id.* Ex. D.

In several instances, the contract fails to address certain applicable federal civil rights requirements. Specifically, it does not but should:

- reference the DOJ's Equal Treatment Regulations;
- comprehensively address applicable Equal Employment Opportunity Plan (EEO) requirements governing subrecipients by, for instance, requiring the subrecipient to

¹ In the DCF's operating procedure regarding equal opportunity in service delivery, the Department asserts that "[e]very contract, grant or financial assistance agreement with a provider, which is negotiated, renewed, or modified after the effective date of this operating procedure, must include one of the following: (1) A completed form CF 707, Civil Rights Certificate/Assurance of Compliance[,] (2) Suitable language equivalent to the assurance of compliance incorporated into the body of the contract, grant or billing vouchers." *Methods of Administration: Equal Opportunity in Service Delivery, CF Operating Procedure No. 60-16 (Feb. 23, 2006) at 18.* Despite this written directive, the standard contract that the OCR reviewed neither includes a completed form CF 707 nor references several of the federal civil rights requirements covered by form CF 707, such as those arising under the Rehabilitation Act of 1973, the Education Amendments of 1972, the Age Discrimination Act of 1975, and related regulations.

submit a copy of an EEOP or an EEOP certification to the DCF so that the Department can monitor its subrecipients' compliance with DOJ's EEOP regulations at 28 C.F.R. § 42.301-.308;

- notify subrecipients that they must submit to the OCR either an EEOP or the OJP's Certification Form stating that they are eligible for a full or partial exemption from the EEOP requirement;
- require subrecipients to forward to the DCF or 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, or sex; and
- require subrecipients to certify that they will take reasonable steps to provide meaningful access to their services to persons with limited English proficiency (LEP).

2. Onsite Visits and Other Monitoring Methods

The Department requires each subrecipient to complete and return a civil rights compliance checklist (CF 946 Checklist) to the pertinent contract manager, which is maintained in the official contract file for each subrecipient and used by the DCF Office of Civil Rights (DCF OCR) during its site visits. The CF 946 Checklist consists of a series of twenty-one questions, with accompanying instructions, that covers the following pertinent areas: demographics of subrecipient service population (Questions 1, 2); race, gender, and disability data about subrecipient beneficiaries (Questions 4, 8); race, gender, and disability data about subrecipient employees and advisory board members (Questions 3, 5, 7); retention of assurances document by subrecipient regarding certain applicable federal civil rights requirements (Question 6); provision of notice to subrecipient employees and beneficiaries about applicable federal civil rights laws and their ability to file employment or services discrimination complaints (Questions 9, 10); availability of grievance procedure and designation of coordinator as required by section 504 of the Rehabilitation Act (Questions 11, 20); status of employment and services complaints filed against subrecipient within the last year (Question 12); provision of services to beneficiaries regardless of their membership in a protected class and consistent with subrecipient obligations under federal civil rights laws (Questions 13, 14, 15, 17-19); provision of subrecipient services and benefits to limited English proficient (LEP) persons (Question 16); and training provided to subrecipient employees about applicable federal civil rights laws (Question 21). In many instances, the instructions refer to regulations promulgated by the U.S. Department of Health and Human Services (Questions 6, 8-9, 10-20), which also provides federal financial assistance to the DCF; however, the instructions do not refer to applicable DOJ regulations. The CF 946 Checklist also includes internal Department information about when it conducted its most recent compliance review of the responding subrecipient, whether the review consisted of an onsite visit or desk review, and whether the subrecipient was required to take any corrective action.

The Department does not regularly perform site visits or desk reviews of all STOP VAWA subrecipients. As reflected on a recent site visit schedule that was provided to the OCR, in 2008, the Department's Contract Oversight Unit (COU) conducted site visits of two DOJ subrecipients; in early 2009, it conducted or planned to conduct site visits of five DOJ subrecipients. The DCF also will conduct onsite and desk monitoring of the Florida Coalition Against Domestic Violence, which is the primary recipient of STOP VAWA funds, and all of its subrecipients during July, August, and September of 2009.

During the Department's onsite review process, the COU uses a second civil rights compliance monitoring checklist (Compliance Monitoring Checklist) to elicit information about the subrecipient. The COU submits the Compliance Monitoring Checklist to the DCF OCR, which determines whether the subrecipient is in compliance with its civil rights obligations or is required to take corrective action. The Compliance Monitoring Checklist consists of a series of twelve questions, with accompanying instructions, that seeks pertinent information about whether the subrecipient maintains records about the race, color, national origin, and gender of its beneficiaries (Question 1); maintains records to show that eligibility requirements for services are applied to beneficiaries without regard to race, color, national origin, gender, age, religion, or disability (Question 2); maintains records to show that all benefits, services, and facilities are available to beneficiaries in an equally effective manner (Question 3); maintains records to show that room assignments are made without regard to race, color, national origin, or disability (Question 4); has a written LEP plan (Question 5); informs employees and beneficiaries about their protection from discrimination (Question 6); has a civil rights grievance and complaint procedure for employees and beneficiaries (Question 7); has an auxiliary aids plan to assure service accessibility to hearing and sight impaired individuals (Question 8); has an affirmative action plan (Question 9); has ADA, Section 504, and Title VI coordinators (Question 10); and has accessible parking, entrances, and bathrooms, as well as visual and audible fire alarms (Question 11). The Compliance Monitoring Checklist also includes internal Department information about when it conducted the onsite visit and whether the subrecipient was in compliance or required to take any corrective action.

3. Training and Technical Assistance

At the beginning of each grant cycle, the DCF provides grant implementation training to all subrecipients, which covers all requirements associated with receiving federal financial assistance. In addition, the Department appears to require subrecipients to participate in an annual civil rights training session, which is provided on its Web site. The online training presentation covers federal civil rights laws of general applicability and related nondiscrimination requirements, the obligation of subrecipients to provide meaningful access to their services to LEP persons, and procedures regarding the filing and handling of discrimination complaints. The presentation emphasizes the U.S. Department of Agriculture's regulations regarding equal opportunity for faith-based organizations; however, it does not address the

DOJ's Equal Treatment Regulations. The Department also has six civil rights officers who provide routine civil rights training to subrecipients and meet with new subrecipient executive directors to discuss basic program requirements. While the Department asserted in its response to the OCR's data requests that it does not provide technical assistance to subrecipients on an ongoing basis, the Compliance Monitoring Checklist notes that designated civil rights officers are responsible for providing technical assistance to individual subrecipients.

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 DCF and its subrecipients. The DCF expects subrecipients to have complaint procedures regarding the handling of employment and services complaints they receive. Typically, subrecipients will adopt the Department's own procedures.

a. Complaints of employment discrimination

The DCF has internal complaint procedures that are available for Department applicants and employees. Under those procedures, an individual must file a written, affirmed complaint that includes the legal basis for the complaint, pertinent information about the complainant and the respondent, and a description and date of the alleged discrimination. The DCF OCR handles and evaluates all employment discrimination complaints that individuals file with the Department. In addition, the State of Florida, through the Florida Commission on Human Relations (FCHR), has procedures in place to respond to complaints of discrimination from the DCF and subrecipient employees. 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 applicant or employee also can file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). The DCF automatically is apprised of any discrimination complaints that are filed against it by Department applicants or employees. It also receives notice through the CF 946 Checklist process of such complaints that a subrecipient applicant or employee files with the FCHR or the EEOC.

b. Complaints of services discrimination

The DCF also has an operating procedure for handling services complaints from its beneficiaries. Under that policy, an individual must file a written, signed complaint that includes the legal basis for the complaint, pertinent information about the complainant and the respondent, and a description and date of the alleged discrimination. The DCF OCR coordinates the review, evaluation, and investigation of all services discrimination complaints that individuals file with the Department. Based on the investigative report, preliminary findings, and recommendations that the assigned investigator prepares in response to the complaint, the DCF OCR determines

whether to issue a formal finding that the complaint is not substantiated (finding of no violation) or substantiated (finding of reasonable cause). 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. In addition, the DCF uses its training module to notify subrecipients that their beneficiaries can file services complaints with the DCF OCR or pertinent federal agency, including the DOJ.

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.*

The DCF participates in the VAWA STOP program, which promotes a coordinated, multidisciplinary approach to improving the criminal justice system’s response to violent crimes against women. The Department’s VAWA STOP program consists of competitive and noncompetitive components.

In 2004, the Department issued a Request for Proposal (RFP) for the VAWA STOP competitive funds it received because it wanted to support specific program objectives. After Congress reauthorized VAWA in 2005, the Department used an Invitation to Negotiate (ITN) process to award additional competitive funds it received because it was unsure about the service objectives it wanted to accomplish. In contrast to an RFP process, an ITN allows self-identified experts to recommend specific service program goals.

In 2008, the DCF issued ITNs regarding the use of VAWA STOP funds for (1) law enforcement training and (2) linguistic and culturally specific victim services. When the Department did not receive any applications for the law enforcement training funds, it awarded monies to the Florida Coalition Against Domestic Violence to help expand statewide law enforcement training for an existing law enforcement training model. One organization applied for the linguistics and culturally specific award; however, it did not satisfy the federal award criteria. As a result, the Department used a Sole Source contract amendment process to subaward the funds to Refuge House Inc., a victim services organization.

During the RFP, ITN, and Sole Source processes, the Department advertises the availability of competitive funds on a statewide basis by disseminating information through the state’s vendor bid system and by posting information online. A committee evaluates applications using predetermined scoring criteria and makes funding recommendations to the Domestic Violence

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Program Office, DCF. Throughout the review and award process, the DCF also provides routine public updates and conducts public meetings.

Nonprofit organizations are eligible to receive VAWA STOP funds. However, in its response to the OCR's data requests, the Department noted that it requires nonprofit applicants to have federal tax exempt status to receive these program funds. At this point, no faith-based organizations receive funds from the DCF.

II. Recommendations

The DCF 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 inclusion of faith-based organizations in the grant funding process, the OCR offers the following five recommendations: (1) modify the civil rights/nondiscrimination provisions in its standard grant contract, (2) refine its compliance checklist and conduct routine monitoring of all VAWA STOP subrecipients, (3) refine its training to VAWA STOP subrecipients regarding applicable DOJ civil rights requirements, (4) refine its complaint procedures, and (5) allow subrecipients to demonstrate nonprofit status by any of the means identified in the DOJ's Equal Treatment Regulations.

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

The DCF should ensure that all DOJ subrecipients agree to grant contracts that accurately reflect their federal civil rights obligations. To that end, the Department should revise its standard contract to incorporate the following language or substantially similar language, which would continue to apply to all subrecipients of DOJ funding, regardless of the amount of federal financial assistance at issue:

Recipient will comply (and will require any subgrantees or contractors to comply) with any applicable federal 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); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and

Procedures); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations).

In the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and the Department of Children and Families (DCF).

Recipient will provide an Equal Employment Opportunity Plan (EEOP) to the Office for Civil Rights, Office of Justice Programs and the DCF, if required to maintain one; otherwise, it will provide a certification to the Office for Civil Rights, Office of Justice Programs and the DCF that it has a current EEOP on file, if required to maintain one. For grantee agencies receiving less than \$25,000; or grantee agencies with less than 50 employees, regardless of the amount of the award, no EEOP is required. Information about civil rights obligations of grantees can be found at <http://www.ojp.usdoj.gov/ocr/>.

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 the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, recipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Recipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing your budgets and in conducting your programs and activities. Additional assistance and information regarding your LEP obligations can be found at <http://www.lep.gov>.

Finally, the DCF 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.

B. Refine Compliance Checklist and Conduct Routine Monitoring of All VAWA STOP Subrecipients

The DCF is to be commended for its efforts to monitor subrecipients through its use of federal civil rights laws compliance checklists. In an effort to improve upon these checklists, the Department should refine them to evaluate 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 DCF or the OCR; and 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 DCF in refining its checklist, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, which is enclosed for the Department's review. As part of its responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the Department also should conduct routine onsite and desk monitoring of all VAWA STOP subrecipients.

C. Refine Training to VAWA STOP Subrecipients Regarding Applicable DOJ Civil Rights Requirements

While the DCF is making a concerted effort to provide training to subrecipients about federal civil rights laws of general applicability, it should refine its training program for VAWA STOP subrecipients to ensure that they are aware of applicable DOJ civil rights requirements, such as those imposed by the Equal Treatment Regulations and the Omnibus Crime Control and Safe Streets Act of 1968. The OCR is available to provide the DCF with technical assistance in revising its civil rights training programs.

D. Refine Complaint Procedures

As previously noted, the DCF 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. Nonetheless, the DCF 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 it may receive from the employees and beneficiaries of VAWA STOP subrecipients. Specifically, it should ensure that it has a policy or procedure 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;

- establishing written procedures for receiving discrimination complaints from subrecipient employees and beneficiaries;
- 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 DCF to resolve the complaint;
- notifying the OCR in writing when the DCF refers a discrimination complaint to another agency or when the Department investigates the complaint internally; and
- training DCF program staff on their responsibility to refer discrimination complaints or potential discrimination issues involving subrecipients to the DCF'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/about/offices/ocr.htm>.

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

The DCF generally requires non-profit organizations to obtain federal tax exempt status under 26 U.S.C. § 501(c)(3) to be eligible for 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), the Department 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 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); *see also* Memorandum from Robert D. McCallum, Jr., Associate Attorney General, to Directors, State Administering Agencies (July 22, 2005), *available at* <http://www.ovw.usdoj.gov/docs/asgmemoreimplementationof28cfrpart38.pdf>.

III. Conclusion

We find that the DCF 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 Department in addressing the concerns raised in

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this Report. **Immediately upon receipt of this letter, we ask that a responsible DCF 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

cc: Ms. Carolyn C. Dudley, Assistant Staff Director for Civil Rights
Florida Department of Children and Families