



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

October 18, 2012

VIA CERTIFIED MAIL

Leonardo M. Rapadas
Attorney General
Guam Office of the Attorney General
Administration Division
287 West O'Brien Drive
Hagåtña, Guam 96910-5151

Re: Compliance Review of Guam Office of the Attorney General (12-OCR-0163)

Dear Mr. Rapadas:

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is responsible for ensuring that recipients of federal financial assistance from the Office of Community Oriented Policing Services, the Office on Violence Against Women (OVW), the OJP, and OJP components comply with federal civil rights laws. As you know, recipients of federal financial assistance have an obligation not to discriminate against protected classes of people either in employment or in the delivery of services.

In carrying out the OCR's civil rights enforcement responsibilities, the OCR is conducting a broad compliance review of all state administering agencies (SAA) in accordance with federal regulation 28 C.F.R. § 42.206. The focus of this review is to determine both compliance with applicable federal civil rights laws and SAA monitoring procedures for ensuring the compliance of subrecipients with these laws. As part of that review, the OCR is evaluating the Guam Office of the Attorney General (OAG or Office). Of particular interest to the OCR is the OAG's compliance with the federal regulations that the DOJ issued in January of 2004, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38. The regulations advise SAAs not to discriminate either in favor of or against faith-based organizations. The regulations also instruct funded faith-based organizations not to discriminate in the delivery of services or benefits based on religion or to use federal funds for inherently religious activities.

On May 15, 2012, the OCR conducted an onsite visit with the OAG in Hagåtña, Guam, to interview management and program staff; we also provided a training program for Office representatives about the OCR and the federal civil rights laws that the OCR enforces, how the OCR enforces civil rights laws, a recipient's obligations to provide services to limited English proficient individuals, civil rights laws that affect faith-based organizations, and effective ways

to monitor subrecipient compliance with applicable civil rights obligations. The OCR would like to thank your personnel for assisting the DOJ during its onsite visit.

In regard to the limited scope of this Compliance Review, the OCR concludes that the OAG is not fully in compliance with the requirements of the federal civil rights laws that the OCR enforces. Specifically, we have reservations about the adequacy of the Office's (1) guidance to subrecipients about their legal obligations regarding applicable federal civil rights laws, (2) monitoring of subgrantee compliance with their civil rights duties, (3) civil rights training for subrecipients, (4) information and training provided to all OAG personnel on the Office's employment nondiscrimination policy and procedures, and (5) complaint procedures for responding to certain discrimination allegations. The following Compliance Review Report includes recommendations for improving the OAG's methods for monitoring the civil rights compliance of subrecipients and ensuring compliance with its federal civil rights obligations.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines the OAG'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 Office'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 OAG's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR evaluates how the Office uses 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 OCR examines the standard assurances that the OAG uses in connection with its administration of the Victims of Crime Act (VOCA) Victim Assistance Grants program. In order to receive DOJ funds through the OAG, a successful applicant must sign a grant agreement that contains the following provisions regarding civil rights laws:

The Provider shall perform the following services and observe the following performance requirements:

* * *

Comply with the Office of Justice Programs Standard Assurances.

* * *

Comply with Office of Justice Programs Certification regarding Office of Civil Rights (OCR), and comply with the requirement to formulate and maintain on file a.) Limited English Proficiency (LEP) plan pertaining to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; b.) An Equal Employment Opportunity Program (EEO) in accordance with 28 CFR 42.301-.308 et. sea.; and c.) Submitting to OCR findings of discrimination (see 28 C.F.R. 42.205(5) or 31.202 (5).

VOCA Victim Services Agreement by and between Office of the Attorney General and Provider, ¶¶ 1.1.14, 1.1.18.¹

As discussed below in Recommendation A, there are basic federal civil rights obligations that govern all DOJ-funded subrecipients and that should be addressed uniformly in the certified assurances documents the OAG uses to subaward VOCA grant funds.

2. Onsite Visits and Other Monitoring Methods

On a monthly basis, the OAG reviews each subgrantee's compliance with a subaward's financial requirements. The Office has not conducted regular site visits of its subrecipients; however, it plans to use this monitoring tool to evaluate subgrantee compliance with applicable programmatic requirements. The OAG does not have any procedures in place to monitor the federal civil rights compliance of its subgrantees.

3. Training and Technical Assistance

The OAG does not provide any formal training to its subrecipients on the civil rights obligations that apply to the receipt of federal financial assistance from the DOJ, although the Office's

¹ The OAG uses a request for proposal (RFP) process to notify the public about subaward opportunities. In its RFP, the Office notifies potential applicants that, in order to receive VOCA funds, they must agree that they will (1) comply with applicable federal nondiscrimination requirements, including those governing employment practices, and (2) collect pertinent demographic data on the clients they serve through their VOCA-funded project.

Program Coordinator provides ongoing technical assistance to subrecipients. This employee is available in person, by e-mail, and by telephone to respond to subrecipient questions about grant requirements that arise at any point during the grant cycle.

4. Complaint Procedures

In reviewing complaint procedures, the OCR evaluates the processes in place for individuals to pursue complaints of employment and services discrimination against the OAG, as well as complaints of employment and services discrimination against its subrecipients.

The OAG has the authority to establish its own human resource policies and procedures; however, to date, it has adopted Guam's personnel rules and regulations, which are administered by the Guam Department of Administration (DOA) and prohibit discrimination in employment based on, among other protected classes, race, color, national origin, religion, sex, and disability. *See* 4 Guam Code Ann. § 4101 (2012); 17 Guam Admin. R. & Regs. § 6102 (1997); Guam Dep't of Administration, Personnel Rules and Regulations, at 1.200. The DOA distributes its Personnel Rules and Regulations to new OAG employees by e-mail. According to the OAG, the DOA also discusses employment practices with new OAG employees and may provide in-service training to existing employees. These rules and regulations contain a detailed process for receiving, investigating, and resolving employment discrimination complaints. Personnel Rules and Regulations at F1-F5; *see also* Guam Exec. Order No. 2006-16 (June 19, 2006). In certain circumstances, an OAG employee can also file an employment discrimination complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or the OCR. Despite the availability of these complaint procedures, the OAG did not provide documentation to the OCR that the Office or the DOA ensures that all new and existing employees receive training on the OAG's nondiscrimination obligations or the process for addressing discrimination complaints.

The OAG provides limited guidance to the public about how members of the Guam community can file a civil rights complaint in connection with the Office's provision of services and benefits in its programs and activities. The OAG has a policy for receiving and resolving disability-related discrimination complaints from members of the public, beneficiaries, and participants. *See* Complaints Relative to the Americans with Disabilities Act Amendments Act of 2008 (Jan. 2012). As part of its system for addressing complaints involving disability discrimination, the OAG issued two notices to the public about its efforts to ensure that all of its programs and activities are available to disabled persons. It also created a complaint form for disability-related concerns. The Office posted all of these materials on its Web site. The OAG also has a policy for providing language assistance to limited English proficient persons. *See* Language Assistance Policy for Persons Who Are Limited English Proficient (Mar. 31, 2011). Unlike the OAG's policy on disability-related complaints, the language assistance policy does not explain how an LEP individual would file a complaint about the Office's provision of language assistance services. The Office also lacks formal procedures for addressing services discrimination complaints based on race, color, sex, religion, or age.

In monitoring subrecipients, the OAG does not evaluate whether subrecipients have policies, procedures, or protocols regarding the handling of employment or services discrimination complaints they receive. The Office also does not determine if subgrantees provide any notification to their employees and beneficiaries about subrecipient processes for handling discrimination complaints or available avenues for filing civil rights complaints.

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) (2012). The Regulations prohibit the DOJ and DOJ-funded recipients from discriminating either for or against an organization on the basis of the organization’s religious character or affiliation. *Id.* In evaluating the OAG’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

The OAG subawards VOCA Victim Assistance Grant program funds through a request for proposal (RFP) process. In an effort to inform potential applicants about an RFP, the Office advertises it in the local newspaper, posts it on the OAG’s Web site, and distributes it by e-mail to current and past subrecipients, as well as to entities that previously applied unsuccessfully for funding. The OAG’s Program Coordinator is available to provide technical assistance to entities that are interested in submitting an application. Once applicants submit their proposals, the Program Coordinator reviews the applications for completeness and compliance with the requirements of the RFP.² After the Office completes its initial review, a committee of two or three members reviews the submissions. This committee uses a set of evaluation criteria, which is included in the RFP, to consider and rate the proposals on a 100-point scale. The committee makes funding recommendations to the Attorney General, who in turn makes the final award decisions. The OAG notifies each applicant about the outcome of the Office’s subaward process. In fiscal years 2011 and 2012, the Office received applications from one faith-based group (Catholic Social Services) for VOCA Victim Assistance Grant program funds. During each of these years, Catholic Social Services received \$7560 from the OAG.

² The OAG does not require a nonprofit applicant to have federal tax exempt status in order to receive VOCA Victim Assistance Grant program funding.

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

The Equal Treatment Regulations circumscribe how faith-based subrecipients may use federal financial assistance. Specifically, such subgrantees may not engage in inherently religious activities with federal funds; nor can they discriminate against potential or actual program beneficiaries on the basis of religion or religious belief. 28 C.F.R. §§ 38.2(b)(1), (d). In administering its DOJ program funds, the OAG does not have a system in place to monitor whether faith-based organizations that receive VOCA Victim Assistance Grant program funds provide services consistent with these restrictions.

II. Recommendations

To strengthen the OAG's civil rights monitoring efforts, the OCR concludes that the Office should implement the following five recommendations: (1) modify the civil rights provisions in its grant agreement, (2) develop an appropriate civil rights monitoring protocol, (3) provide consistent training to all subrecipients regarding their obligations to comply with federal civil rights laws, (4) provide information and training to all OAG personnel on applicable employment nondiscrimination policy and procedures, and (5) develop a comprehensive policy for addressing discrimination complaints.

A. Modify the Civil Rights Provisions in Its Grant Agreement

The OAG should ensure that all DOJ subrecipients agree to grant agreement assurances that accurately reflect their federal civil rights obligations. To that end, the OCR recommends that the Office amend its grant agreement to include the following language or substantially similar language, which would apply to all applicants for and 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 (Safe Streets Act) (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. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of

Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Exec. Order No. 13279 (equal protection of the laws for faith-based and community organizations); Exec. Order No. 13559 (fundamental principles and policymaking criteria for partnerships with faith-based and other neighborhood 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 OCR and the Guam Office of the Attorney General (OAG).

Recipient will provide an Equal Employment Opportunity Plan (EEO) to the OCR and the OAG, if it is a state government, a local government, or a for-profit entity that has 50 or more employees and receives a single award for \$500,000 or more that is subject to the administrative provisions of the Safe Streets Act; otherwise, it will provide a certification to the OCR and the OAG that it has a current EEO on file, if it has 50 or more employees and receives a single award for \$25,000 or more, but less than \$500,000, that is subject to the administrative provisions of the Safe Streets Act. For state governments, local governments, and for-profit entities receiving less than \$25,000, or for state governments, local governments, and for-profit entities with fewer than 50 employees, regardless of the amount of the award, no EEO is required. Information about civil rights obligations of grantees can be found at <http://www.ojp.usdoj.gov/ocr/>.

The OAG may also consider including in its grant agreement the following language or substantially similar language regarding language assistance services:

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 Safe Streets Act and Title VI of the Civil Rights Act of 1964, Recipient must take reasonable steps to ensure that LEP persons have meaningful access to its programs

and activities. 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 its budgets and in conducting its programs and activities. Additional assistance and information regarding your LEP obligations can be found at <http://www.lep.gov>.

The Office may also wish to add a sentence to its grant agreement 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. Develop Appropriate Civil Rights Monitoring Protocol

As part of its responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the OAG should ensure that it conducts periodic monitoring of its subrecipients and reviews issues involving civil rights compliance. To that end, the Office should develop a monitoring instrument that evaluates compliance with the various civil rights requirements that apply to all DOJ-funded subrecipients (e.g., whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act of 1973; 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; and whether the subrecipient is taking reasonable steps to provide meaningful access to programs and activities for LEP persons). This monitoring tool should also include questions that evaluate whether a 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. To assist the OAG in refining its monitoring materials, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, which is enclosed for the Office's review.

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

The OAG should ensure, through periodic and mandatory training, that all subgrantees are aware of their obligations under applicable federal civil rights laws. The Office 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 has developed training modules that explain a recipient's various civil rights obligations, and which are available at <http://www.ojp.usdoj.gov/about/ocr/assistance.htm>. The Office may wish to incorporate these videos into its own subgrantee training program. The OCR is also available to provide the Office with additional technical assistance in developing its civil rights training program.

D. Provide Information and Training to All OAG Personnel on the Office's Employment Nondiscrimination Policy and Procedures

The OAG does not appear to have any formal mechanism in place to educate its employees on the Office's employment nondiscrimination policy and related procedures. To address this identified deficiency, the Office, in coordination with the DOA, should provide information and training to new and existing employees on the OAG's nondiscrimination obligations and the applicable complaint process for receiving and resolving employment discrimination complaints.

E. Develop Comprehensive Policy for Addressing Discrimination Complaints

As previously noted, the OAG adopts the DOA's procedures for responding to discrimination complaints from the Office's own employees, and the EEOC and the OCR are also available to resolve certain discrimination complaints. The OAG also has a system for handling disability-related discrimination complaints it receives from members of the public. While these measures are important, the Office has the broader obligation as a recipient of federal financial assistance to have in place a policy that comprehensively addresses how it responds to (1) services discrimination complaints that it receives from beneficiaries alleging discrimination based on race, color, national origin, sex, religion, and age, and (2) employment and services discrimination complaints that it receives from subgrantee employees and beneficiaries. Specifically, it should ensure that it has a policy for addressing discrimination complaints that includes at a minimum the following elements:

- designating a coordinator who is responsible for overseeing the complaint process;
- notifying all OAG beneficiaries and subrecipient employees and beneficiaries of all prohibited discrimination in funded programs and activities and the OAG's policy and procedures for handling discrimination complaints;
- establishing written procedures for receiving discrimination complaints from all OAG beneficiaries and subgrantee employees and beneficiaries;
- investigating each complaint internally or referring it to the appropriate agency, such as the EEOC or the OCR, for investigation and resolution;
- notifying the complainant that he or she may also file a complaint with the OCR;
- training OAG program staff members on their responsibility to refer discrimination complaints or potential discrimination issues involving the OAG or subrecipients to the Office's complaint coordinator for processing as soon as the alleged discrimination comes to their attention;

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- ensuring that subrecipients have procedures in place for responding to discrimination complaints that employees and beneficiaries file directly with the subrecipient; and
- ensuring that subrecipients notify their employees and beneficiaries of prohibited discrimination and the procedures for filing a complaint of discrimination.

To assist the OAG in developing an appropriate complaint policy, the OCR encloses discrimination complaint procedures that were adopted by three other state administering agencies. While the Office's adoption of these procedures would satisfy the instant recommendation, the OCR also recognizes that there may be other, equally effective complaint procedures that accomplish the same objectives. Additional 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 OAG 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 Office in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible OAG official contact Attorney Advisor Christopher Zubowicz to develop a timeline and goals for implementing the OCR's recommendations.**

Thank you for your cooperation and assistance during the Compliance Review process. If you have any questions, please contact Mr. Zubowicz at 202.305.9012.

Sincerely,

/s/ Michael L. Alston

Michael L. Alston
Director

Enclosures

cc: Franklin Artero, Program Coordinator
Guam Office of the Attorney General (Via Electronic Mail)