



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

VIA CERTIFIED RETURN RECEIPT REQUESTED

January 15, 2010

Kristen Mahoney
Executive Director
Governor's Office of Crime Control and Prevention
300 E. Joppa Road, Suite 1105
Baltimore, Maryland, 21286-3016

**Re: Maryland Governor's Office of Crime Control and Prevention
Compliance Review (08-OCR-0389)**

Dear Ms. Mahoney:

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 Administrative Agencies, including the Maryland Governor's Office of Crime Control and Prevention (GOCCP), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the GOCCP's compliance with applicable federal civil rights laws along with the GOCCP's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the GOCCP's implementation and monitoring of the Department of Justice's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations].

On November 21, 2008, the OCR conducted an onsite visit to the GOCCP's office in Baltimore, Maryland, to interview the GOCCP's administrators and to conduct a training program on federal civil rights laws that the OCR enforces. On the same day, the OCR conducted an onsite visit to Adelante Familia, a GOCCP-funded faith-based organization (FBO). The OCR would like to thank GOCCP staff, especially Debra Arnold, GOCCP Division Chief, Eastern Region, for assisting OCR attorney [REDACTED] during the onsite visit.

Based on the GOCCP's responses to our Data Request and the information we gathered onsite, the OCR concludes, in regard to the limited scope of our review, that the GOCCP

is not fully compliant with the federal civil rights laws that the OCR enforces. We have reservations about (1) whether the GOCCP has adequate monitoring procedures in place to review subrecipients' compliance with applicable federal civil rights laws and (2) whether the GOCCP provides sufficient training to its subrecipients on their federal civil rights obligations. The OCR also finds that the St. Vincent de Paul Society of Baltimore, one of the GOCCP's subrecipients, has a stated policy of denying services to eligible beneficiaries on the basis of race, color, and national origin in violation of Title VI of the Civil Rights Act (Title VI) of 1964, 42 U.S.C. ' 2000d, and the nondiscrimination provisions of the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, 42 U.S.C. ' 3798(d)(c)(1). The following Compliance Review Report includes recommendations for the GOCCP's compliance with the federal civil rights laws that the OCR enforces.

I. Compliance Review Report

The Compliance Review Report first examines the GOCCP's procedures for monitoring subrecipients' compliance with the federal civil rights laws that are a condition for receiving federal financial assistance. The Report then assesses the GOCCP's implementation of the DOJ's Equal Treatment Regulations.

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

In reviewing the GOCCP's monitoring of subrecipients' compliance with their federal civil rights obligations, the OCR examined how the GOCCP 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 funded programs.

1. Standard Assurances

Recipients of federal financial assistance from the OJP are responsible for certifying that contractors and subrecipients under DOJ programs comply with applicable federal civil rights laws. As a condition for receiving an award, the GOCCP requires subrecipients to sign Certified Assurances.

Paragraph six of the Certified Assurances states that subrecipients and their contractors agree to comply with the nondiscrimination requirements of the Safe Streets Act; Title VI of the Civil Rights Act of 1964; Sec. 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act (ADA) of 1990; Title IX of the Education Amendments of 1982; the Age Discrimination Act of 1975; the Department of Justice Nondiscrimination Regulations, 28 C.F.R. Part 42, Subparts C,D,E, and G; and Department of Justice Regulations on disability discrimination, 28 C.F.R. Part 35 and

Part 39. The Certified Assurances do not include the statutory citations to the nondiscrimination provisions mentioned.

Paragraph seven of the Certified Assurances provides that in the event a federal or state court or administrative agency makes a finding of discrimination after a due process hearing against the subrecipient on the grounds of race, color, religion, national origin, sex, or disability, the subrecipient should send a copy of the finding to the GOCCP.

Paragraph eight of the Certified Assurances states, if required, subrecipients have to formulate an Equal Employment Opportunity Plan (EEO) in accordance with the applicable federal regulations, 28 C.F.R. §§ 42.301- .308, and to maintain an EEO on file. Additionally, it requires subrecipients to submit a certification to the GOCCP stating that they have a current EEO on file. The Certified Assurances do not have a provision stating that all subrecipients must submit either an OCR EEO Certification Form or an EEO, if required, to the OCR.

The Certified Assurances do not refer to the Equal Treatment Regulations, 28 C.F.R. pt. 38.

Recommendation

The GOCCP should revise paragraph six of the Certified Assurances to include the legal citations to the relevant statutes and a reference to the Equal Treatment Regulations:

It will comply (and will require any subgrantees or contractors to 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 the DOJ's Equal Treatment Regulations, 28 C.F.R. pt. 38.

The GOCCP should include in its Certified Assurances or other grant document notice to subrecipients on their obligation to provide services to LEP individuals with a reference to the DOJ's Guidance document. See U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (2002)(DOJ Guidance).

The GOCCP should revise paragraph eight in the Certified Assurances to instruct the subrecipients that are subject to the obligation to complete the OCR's EEOP Certification Form, available at <http://www.ojp.usdoj.gov/about/ocr/eeop.htm>, and to send it to the OCR. The EEOP Certification Form certifies that subrecipients are either exempt from preparing an EEOP or required to prepare an EEOP but exempt from submitting it to the OCR for review. Additionally, the GOCCP should direct certain subrecipients (i.e., subrecipients that are governmental or for-profit entities, that have fifty or more employees, and that receive a single award of \$500,000 or more under the Safe Streets Act or other DOJ program statutes) to submit their EEOPs to the OCR. Subrecipients that submit an EEOP to the OCR do not need to submit an EEOP Certification Form.

2. Onsite Visits and Other Monitoring Methods

During the OCR's onsite visit, the GOCCP staff stated that subrecipients submit quarterly reports that the GOCCP uses to monitor their progress, performance, and financial status. The GOCCP has temporarily suspended regular, onsite monitoring visits to subrecipients because of budget constraints. The GOCCP staff stated that its program managers may still occasionally conduct an onsite visit, if the subrecipient's quarterly report indicates a significant problem. The GOCCP provided to the OCR a sample questionnaire that it uses for desk audits and onsite monitoring visits. The questionnaire has a few questions related to the federal civil rights obligations of subrecipients:

Does the program have an equal opportunity employment plan?

Has the program ever had a finding of discrimination after a due process hearing by a federal or state court, or federal or state agency on the grounds of race, color, religion, national origin, or sex?

If yes, have they notified the GOCCP and forwarded a copy of the finding to the GOCCP?

Was a copy of the finding forwarded to the Office of Civil Rights, Office of Justice Programs?

Recommendation

At a minimum, the GOCCP should conduct desk audits to ensure that subrecipients are complying with their federal civil rights obligations. It also should develop a civil rights checklist when conducting audits and onsite visits, once they resume. The checklist would evaluate a number of civil rights requirements that are binding on recipients of federal funding (for example, whether the subrecipient has an EEOP on file or has sent one to the OCR, whether the subrecipient has findings of discrimination to report to the OCR, whether the subrecipient programs and activities comply with federal nondiscrimination laws, whether the subrecipient has developed a language assistance

plan for providing services to LEP individuals, whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act, or 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 GOCCP should include questions to evaluate whether the subrecipient is complying with DOJ's Equal Treatment Regulations, including the prohibitions against using federal funds to engage in inherently religious activities and discriminating against program beneficiaries based on religion. The OCR has enclosed a sample Federal Civil Rights Compliance Checklist to provide the GOCCP with technical assistance in developing a federal civil rights monitoring checklist. For the GOCCP, developing improved monitoring procedures should be top priority.

3. Training and Technical Assistance

The GOCCP does not currently provide any training for its subrecipients on their civil rights obligations. In its Data Request Response, the GOCCP said that it provides training packets and one-on-one training upon request to any subrecipient needing information on how to write an EEOP. In addition, the GOCCP stated that staff members verbally direct subrecipients with questions about developing an EEOP to the OCR's web page for specific information. The GOCCP informed the OCR that the GOCCP provides Technical Assistance (TA) and training on the Grants Management System (GMS) to prospective subrecipients to assist them in the preparation of a grant application; the GOCCP stated it could incorporate a component on federal civil rights obligations in its TA or GMS training program.

Recommendation

To ensure that subrecipients are aware of their obligations under the federal civil rights laws (e.g., to comply with the DOJ's Equal Treatment Regulations, to provide services to LEP individuals, and to prohibit discriminatory practices in programs and activities), the GOCCP should provide periodic training programs for its subrecipients on the applicable federal civil rights laws. The GOCCP should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the GOCCP provides the training in person, by teleconference, or through other means. The GOCCP could incorporate the training into its TA or GMS training. Developing a mandatory training program to include the federal civil rights obligations should also be a top priority. The OCR is available to provide the GOCCP with technical assistance in developing a civil rights training program.

4. Complaint Procedures

The GOCCP does not have its own procedures for accepting and investigating discrimination complaints from its employees or from beneficiaries and employees of the GOCCP subrecipients. In response to the OCR's Data Request, the GOCCP states that it

would direct all complainants to file a report with the Maryland Commission on Human Rights.

Recommendation

The GOCCP should adopt a policy for addressing discrimination complaints that includes, at a minimum, the following elements:

- Designating a coordinator who is responsible for overseeing a complaint process and reviewing initial complaints;¹
- Notifying its employees and the employees and beneficiaries of subrecipients of prohibited discrimination in the programs or activities receiving federal funds;
- Establishing procedures for handling complaints alleging discrimination in DOJ-funded programs or activities not only from GOCCP employees but also for employees and beneficiaries of the GOCCP's subrecipients;
- Referring each complaint to the appropriate agency for investigation and resolution, such as the U.S. Equal Employment Opportunity Commission or the Maryland Commission on Human Rights, or referring the complaint to the OCR for review, which will then work with the GOCCP to resolve it;
- Notifying the OCR in writing when the GOCCP refers a discrimination complaint to the EEOC or a state administrative agency responsible for handling employment or services complaints, if available; and
- Training GOCCP program staff members on their responsibility to refer discrimination complaints, or potential discrimination issues, to the GOCCP's complaint coordinator for processing as soon as alleged discrimination comes to their attention.

The OCR has enclosed a sample complaint policy. The OCR's website, www.ojp.usdoj.gov/ocr/crc, has additional information about applicable laws, complaint forms, and the investigative process. Implementing a comprehensive policy for addressing discrimination complaints deserves the GOCCP's immediate attention.

B. Monitoring Compliance with Equal Treatment Regulations and General Civil Rights Laws

¹ See 28 C.F.R. § 31.202(a)(1) (instructing state administrative agencies receiving formula grants under the Juvenile Accountability Block Grants to designate a contact person responsible for meeting all civil rights requirements and serving as a liaison with the OCR).

The Equal Treatment Regulations ensure that “[r]eligious organizations are eligible, on the same basis as any other organizations, to participate in any [Justice] Department program for which they are otherwise eligible.” 28 C.F.R. § 38.1(a). In evaluating the GOCCP’s equitable treatment of FBOs, this Compliance Review focuses on three issues: (1) examining the GOCCP’s process for making awards to applicant FBOs, (2) conducting a site visit to an FBO that is a subrecipient of GOCCP funding, and (3) reviewing the GOCCP’s procedures for ensuring that funded FBOs comply with applicable federal civil rights laws.

1. The Process for Making Awards to Applicant FBOs

In the Data Request Response, the GOCCP says that it does not have any special procedures that either favor or disfavor FBOS in the funding process. The GOCCP informs all potential applicants about the availability of DOJ program funding by posting on its website a Notice of Funding Availability (NOFA), <http://www.goccp.maryland.gov/>. The GOCCP states it convenes a panel to review all grant applications that respond to the NOFA. The GOCCP describes the review panel as including a cross section of individuals who have subject matter expertise related to the specific grant program under review.

During the OCR’s onsite visit, the GOCCP grant managers said that the GOCCP identifies an organization as faith-based based on its name.² The GOCCP made awards to one FBO in FY 2006, to two in FY 2007, and to two in FY 2008.

In the Data Request Response, the GOCCP states that it does require nonprofit organizations that apply for or receive funding to provide proof of their federal tax-exempt status under 26 U.S.C. § 501(c)(3). During the onsite visit, the GOCCP informed the OCR that it would not reject a grant application for lack of documentation showing its Section 501(c)(3) status, but it would require other proof of the organization’s nonprofit status.

Recommendation

Although its policy of not requiring applicants or subrecipients to document federal tax-exempt status under Section 501(c)(3) to be eligible for funding is consistent with the Equal Treatment Regulations (see 28 C.F.R. §§ 38.1 (g), .2(g)), the GOCCP should be aware that there is an exception. To be eligible for funding under the Juvenile Justice and Delinquency Prevention Act (JJDP), 42 U.S.C. § 5672 (b), nonprofit organizations must have documentation of their Section 501(c)(3) status. See id. § 5603(23). The GOCCP should ensure that its treatment of nonprofit organizations, including FBOs, conforms to the applicable law.

² The Equal Treatment Regulations do not provide a definition for faith-based organization. The GOCCP’s subrecipients self-identify their organizations as faith-based.

2. Review of a GOCCP-Funded FBO for Compliance with the Equal Treatment Regulations and Other Federal Civil Rights Laws

a. Finding Compliance with the Equal Treatment Regulations

The OCR conducted an onsite visit to one of the GOCCP's faith-based subrecipients, St. Vincent de Paul of Baltimore in Baltimore, Maryland. St. Vincent de Paul is a recipient of a Services Training Officers Prosecutors (STOP) grant under the Violence Against Women Act (VAWA), receiving \$39,139 for its program Adelante Familia. Adelante Familia's promotional material states it is a bilingual program addressing the needs of immigrant victims of domestic violence. Adelante Familia states it uses the funding to hire staff who provide victim support services in Baltimore's Latino communities. During the OCR's onsite visit, Adelante Familia's Director stated that it is a nonprofit organization following Catholic doctrine. For example, its programs do not include activities such as distributing condoms or advocating abortions. The Director stated that its activities do not involve religious instruction, worship, or proselytization. The Director also stated that the program does not have preferential employment policies based on religion. She stated that Adelante Familia has no policy of inquiring into the religious affiliation of potential or current employees. Additionally, Adelante Familia does not track the religious affiliation of beneficiaries. The OCR did not observe Adelante Familia using federal resources for inherently religious activities in violation of 28 C.F.R. §§ 38.1(b)(1), .2(b)(1).

b. Finding Noncompliance with Other Civil Rights Laws

The OCR, found that Adelante Familia is in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the nondiscrimination provisions of the Safe Streets Act. Both statutes prohibit recipients of federal financial assistance to discriminate on the basis of national origin in the delivery of services or benefits. During the OCR's interview with the Director and Assistant Director of Adelante Familia, the OCR found that the program has a policy against serving non-immigrant, English-proficient people who request support services. The Director and Assistant Director stated that Adelante Familia refers non-immigrant, English-proficient survivors of domestic violence to other domestic violence assistance programs within Baltimore. The Director stated that non-immigrant, English-proficient survivors have access to other service providers, whereas Adelante Familia is the only resource available to LEP, immigrant survivors of domestic violence.

The VAWA, which authorizes STOP grants, permits recipients of federal financial assistance to use racial and ethnic classifications to provide full linguistic access and culturally specific services and resources to underserved communities. See 42 U.S.C. § 13925a(17) (2009). Some of the factors defining underserved communities are geographic location, race and ethnicity, or special needs (e.g., language barriers, disability, alienage status, or age). See id. § 13925a(33). The VAWA, however, also

amends and incorporates the Safe Street Act by reference. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, Title IV, § 40121 (2009). As previously noted, the Safe Streets Act specifically prohibits discrimination based on national origin in any program or activity funded in whole or in part with federal funds. See 42 U.S.C. ' 3789d(c)(1). Moreover, the Supreme Court has held that although Congress has the authority to use racial or ethnic classifications in federal programs, such programs are subject to strict constitutional scrutiny. Adarand Constr., Inc. v. Pena, 515 U.S. 200 (1995).

Given that federal programs using racial and ethnic classifications are subject to strict scrutiny and that VAWA incorporates the Safe Streets Act's nondiscrimination provisions and that Title VI would also apply, Adelante Familia, as a STOP grantee, cannot deny services to eligible beneficiaries based on immigration or language proficiency status. Although the program can specifically target linguistically and culturally underserved populations, Adelante Familia must serve all people who are eligible to receive the funded benefits. Based on the information obtained by the OCR, Adelante Familia's programs and activities do not comply with federal civil rights laws that prohibit discrimination based on national origin.

Recommendation

The GOCCP should within thirty days from the date of this letter make an onsite monitoring visit to Adelante Familia and work with program administrators to correct the problematic practice of excluding eligible beneficiaries based on national origin. Also within thirty days from the date of this letter, the GOCCP should provide the OCR with a written status report, noting the steps it has taken to ensure the compliance of Adelante Familia with Title VI and the nondiscrimination provisions of the Safe Streets Act.

The GOCCP should also make sure that its monitoring of all subrecipients includes a review of their compliance with the applicable federal civil rights laws. For this purpose, the GOCCP may find useful a monitoring checklist that includes civil rights compliance items (see supra Section I.A.2).

The GOCCP should also require the Adelante Familia and all subrecipients to attend mandatory civil rights training (see supra Section I.A.3). The OCR is available to assist the GOCCP with any technical assistance or additional guidance.

3. Procedures for Ensuring that FBOs Comply with Applicable Federal Civil Rights Laws

In its Data Request Response, the GOCCP states that all STOP Violence Against Women formula grant solicitations include the following paragraph:

Faith-based organization applying for STOP funds do not have to lose or modify their religious identity (i.e. removing religious symbols) to be considered an eligible applicant. However, STOP funds may not be used to fund any inherently religious activity, such as prayer or worship. Inherently religious activity is permissible, although it cannot occur during an activity funded with STOP grant funds; such religious activity must be separate (in time or place) from the STOP funded program. Further, participation in such religious activity by individuals receiving services must be voluntary.

Beyond this language appearing in all GOCCP STOP formula grant solicitations, the GOCCP does not have language regarding procedures for ensuring that its FBO subrecipients comply with applicable federal civil rights laws.

Recommendation

The GOCCP should include language regarding the Equal Treatment Regulations in all of its DOJ grant solicitations. Additionally, as discussed above in Section I.A.2., the GOCCP should reassess the importance of conducting regular onsite visits to monitor its subrecipients' compliance with federal civil rights laws, including the Equal Treatment Regulations' prohibition against engaging in inherently religious activities. Grant managers should ensure that any religious activities of subrecipients are separate in either time or place from DOJ-funded programs. Moreover, the GOCCP should consider adding questions regarding subrecipients' compliance with the prohibition against the use of federal funds for inherently religious activities to the questionnaire discussed above in Section I.A.2.

II. Conclusion

Although the GOCCP has in place many procedures to ensure its own and its subrecipients' compliance with the applicable federal civil rights laws, the OCR found that at least one subrecipient had adopted a policy of discriminating on the basis of national origin in the delivery of services. Immediately on receipt of this letter, please have a responsible GOCCP official contact [REDACTED] to discuss the GOCCP's plans 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 [REDACTED] at [REDACTED]
[REDACTED]

Sincerely,

Kristen Mahoney, Executive Director
Governor's Office of Crime Control and Prevention
January 15, 2010
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Michael L. Alston
Director

Enclosures