



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

September 18, 2012

Bruce Goldberg, Director
Oregon Health Authority
500 Summer Street, NE, E-20
Salem, Oregon 97301-1097

RE: Oregon Health Authority Compliance Review (11-OCR-0508)

Dear Dr. Goldberg:

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 (SAA), including the Oregon Health Authority (OHA), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the OHA's compliance with applicable federal civil rights laws along with the OHA's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the OHA's implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 (Equal Treatment Regulations).

On September 27, 2011, the OCR conducted an onsite visit to the OHA's offices in Salem, Oregon, to interview OHA administrators and to conduct a training program for OHA administrators and program staff on the federal civil rights laws that the OCR enforces. The OCR would like to thank the OHA staff for assisting OCR attorney Debra Murphy during the onsite visit.

In regard to the limited scope of our review, the OCR concludes that the OHA has taken steps to comply substantially with the federal civil rights laws that the OCR enforces. Nonetheless, we have concerns about the adequacy of the non-discrimination provisions in the certified assurances, the sufficiency of training and monitoring of subrecipients, and the adequacy of complaint procedures. The following Compliance Review Report includes recommendations for improving the OHA's methods for monitoring the civil rights compliance of subrecipients and ensuring that it meets its obligations under federal law.

I. Overview

This Compliance Review Report first examines the OHA'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 Compliance Review Report then focuses on the OHA's implementation of the DOJ's Equal Treatment Regulations.

The OHA was formed in 2011 with the mission to help "people and communities achieve optimum physical, mental and social well-being through partnerships, prevention and access to quality, affordable health care." When it was formed, the OHA took over several functions that were previously managed by the Oregon Department of Human Services (DHS), and OHA still retains a close administrative relationship with the DHS. OHA administers significant federal financial assistance from the U.S. Department of Health and Human Services (HHS), including Medicaid. One of the primary divisions of the OHA is the Addictions and Mental Health Division (AMH), which administers the Office of Juvenile Justice and Delinquency Prevention's Enforcing Underage Drinking Laws (EUDL) program. EUDL is the only DOJ grant program that the OHA administers.

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 OHA's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the OHA used the following four tools: (1) certified assurances; (2) onsite visits and other monitoring methods; (3) training programs and technical assistance; (4) procedures for receiving, investigating, and resolving complaints alleging discrimination in the delivery of services and employment.

1. Certified Assurances

In response to the OCR's inquiry about standard assurance forms, the OHA provided a copy of the 2009-2011 Intergovernmental Agreement for the Financing of Community Mental Health, Developmental Disability and Addiction Services, which outlines the terms under which OHA funds subrecipients, including subrecipients under the EUDL program. This document contains an Exhibit entitled Required Federal Terms and Conditions, which enumerates federal laws with which subrecipients will comply. This includes the following provision:

Miscellaneous Federal Provisions. County shall comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Services. Without limiting the generality of the foregoing, County expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Titles VI and VII of the Civil Rights Act of 1964, as amended, (b) Section 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, . . . (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, . . . (h) all regulations and administrative rules established pursuant to the foregoing laws.

The EUDL funding is on a two-year cycle, so this contract is signed by subrecipients biannually. The above paragraph does not capture the civil rights obligations of subrecipients under OJP

programs, and Section II.A. provides a comprehensive list of the civil rights statutes that apply to DOJ subrecipients.

The Required Federal Terms and Conditions also contains the following provision:

Equal Employment Opportunity. If this Agreement, including amendments, is for more than \$10,000, then County shall comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

While this may be a correct description of the equal employment opportunity requirements under the U.S. Department of Labor regulations, DOJ has different requirements for recipients receiving OJP funds. Section II.B. provides the correct requirements for complying with DOJ’s equal employment opportunity program.

2. Onsite Visits and Other Monitoring Methods

During the onsite portion of OCR’s review, OHA staff said that they conduct an onsite monitoring visit to subrecipients once every three years. In advance of the monitoring visit, the OHA sends subrecipients a copy of the OHA’s Site Review Form. This form contains several queries related to civil rights. Subrecipients are asked if they have “comprehensive written policies and procedures stating that services are available and accessible, that no person will be denied services or discriminated against based on sex, race, color, creed, sexual orientation, disability or age.” Although somewhat redundant, the OHA asks later in the Site Review Form if the subrecipient has an anti-discrimination policy. OHA staff stated during the onsite visit that these questions apply to non-discrimination in services, not employment. The OHA staff told the OCR that an OHA monitor generally would not ask to see or otherwise evaluate the adequacy of such a policy. Subrecipients are then asked if “materials developed are in the participant’s native language,” and if “materials are culturally relevant to the demographic and professional background of participants.” On the Site Review Form, the OHA monitor can either check “exceeds,” “compliant,” “non-compliant,” or “N/A” after any of these prompts. There is also space on the form for the OHA monitoring to write in “findings.” Following the onsite visit, the OHA monitor writes a narrative report that includes recommendations for corrective action. The subrecipient may comment on the report before it becomes final, and the subrecipient is then allowed sixty days to implement the corrective action.

In addition, OHA’s Addictions and Mental Health Division (AMH) maintains a Cultural Competency Plan, the purpose of which is to “establish cultural competency standards, values and policy requirements for AMH and all organizations and agencies that receive grant funds.” This plan identifies eight “core sections” of operations that need to be addressed in order to improve cultural competency. Those core sections are: planning; evaluation; services to clients; retention, recruitment, and promotion; education and training for staff and service providers; collaborative partnerships and informing the public; data collection and operations; and compliance with the Americans with Disabilities Act. Within each core section, the AMH defines specific strategies for moving toward cultural competency. While this plan is broader than the obligations that the OCR enforces, the plan does address the need for competent language services for clients, access to services for persons with disabilities, grievance procedures for staff and beneficiaries, and staff training. The OHA staff informed the OCR

during the onsite portion of this review that subrecipients are asked to develop a cultural competency plan modeled on the AMH plan, and that site monitors ask subrecipients if they have done so during monitoring visits.

3. Training and Technical Assistance

According to its Data Response and information provided to the OCR during the onsite portion of this review, the OHA does not provide any civil rights training to subrecipients of DOJ funding.

However, OHA does provide civil rights training to staff, which would include grant monitors. First, all new employees receive training in non-discrimination in the workplace and the OHA complaint procedures as part of new employee orientation. While this does not train employees in how to monitor the civil rights compliance of subrecipients, it does provide employees with a foundation in the basic non-discrimination laws. In addition, all OHA managers are required to attend a training entitled Creating a Legal Work Environment, which provides more thorough instruction in federal and state civil rights requirements, and how to respond to allegations of discrimination. New managers also must complete an on-line training entitled Maintaining a Professional, Discrimination and Harassment-Free Workplace. As with the new staff orientation, this training for new managers focuses on workplace discrimination, and not monitoring civil rights compliance of subrecipients.

4. Complaint Procedures

The Civil Rights Division of Oregon's Bureau of Labor and Industries (BOLI) enforces all of Oregon's civil rights laws, which collectively prohibit discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age, and disability in employment, public accommodations, housing, and professional/trade schools. These statutes would apply to employees of the OCCF and subrecipients, and may apply to beneficiaries if the service for which they are applying qualifies as a public accommodation. BOLI's website describes in detail the complaint, investigation, conciliation and hearing processes. BOLI's website also informs potential complainants of their right to file with the U.S. Equal Employment Opportunity Commission or to use their employer's internal grievance procedures.

In addition, the OHA provided the OCR with a policy entitled Discrimination and Harassment Complaint Procedures [OHA Complaint Procedures], which state that it is OHA's policy to "provide a work environment free from discrimination, harassment, intimidation, bias and bullying on the basis of race, color, religion, sex, marital status, national origin, disability, age, sexual orientation, [or] gender identity." This policy also prohibits retaliation. The OHA Complaint Procedures direct complainants to the Office of Equity and Inclusion (OEI) (formerly the Office of Multicultural Health and Services), any OHA or DHS supervisor or manager, or the Human Resource Office; complaints that are not initially received by OEI must be referred to OEI. complainants are encouraged to use OEI's Equal Employment Opportunity Discrimination/Harassment Complaint Form [OIE Complaint Form], although an investigation may proceed without the use of the OIE Complaint Form. The OHA Complaint Procedures also detail the complaint process, investigation, informal resolution or mediation, communication and reporting, corrective action, appeal, and the timeline for each step in the process. On its face, this policy applies to only employees of the OHA. However, during the onsite portion of the

OCR's compliance review, OHA staff stated that the policy could be used by its own beneficiaries or employees and beneficiaries of subrecipients.¹

Whether or not the above policy is applicable to beneficiaries of the OHA or the employees and beneficiaries of subrecipients, the OHA also submitted three DHS documents addressing discrimination.² These included DHS-010-005, Non-Discrimination on the Basis of Disability for Programs, Services and Activities [DHS Disability Policy], DHS-010-005-01, Filing a Client Complaint or Report of Discrimination [DHS Complaint Procedure], and DHS-0170, Client Complaint or Report of Discrimination Form [DHS Complaint Form]. The DHS Disability Policy is very detailed, and describes how the DHS will comply with Title II of the ADA. It describes administrative responsibilities, such as appointing an ADA coordinator; it also addresses all aspects of service accessibility including, but not limited to, program access, reasonable modifications/accommodations, and effective communication. Although it references Section 504 of the Rehabilitation Act, the DHS Disability Policy appears to only apply to services discrimination, and not employment discrimination as covered by Section 504.

The DHS Complaint Procedure applies to “[i]ndividuals who believe the [DHS] has either treated them unfairly or has failed to protect case history or medical information [and] individuals including clients, client applicants and members of the public who believe they have been discriminated against,” and it directs complainants to use the DHS Complaint Form. Although the DHS Complaint Procedures invite *any* aggrieved client to file a Complaint, the DHS Complaint Form asks complainants if they were discriminated against based upon age, gender, race, color, national origin, religion, political beliefs, disability, sexual orientation, or another category; complainants can also indicate if they “did not receive good customer service,” or if their personal information was not kept confidential. Once this form is completed, the DHS Complaint Procedures outline how the Complaint will be processed through the chain of command at DHS, and other agencies of DHS components that may be notified. The DHS Complaint Procedures also provide for corrective action or remedial measures that may be taken.

The OHA indicated in its Data Response that the above mentioned DHS policy, procedure and form apply to OHA beneficiaries and the beneficiaries of subrecipients. If that is the case, then the OHA needs to make sure that its beneficiaries and the beneficiaries of its subrecipients are notified of this. Section II.E. of this Compliance Review Report provides recommendations for clarifying the application of its current complaint procedures for OHA beneficiaries, and the beneficiaries and employees of subrecipients, or developing new policies if the current policies are insufficient.

B. Monitoring Compliance with Equal Treatment 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

¹ The observations and recommendations in this Compliance Review Report about grievance procedures for beneficiaries pertain only to OHA beneficiaries under DOJ--funded programs, such as EUDL. OHA should consult the appropriate funding agency for guidance on the civil rights requirements that apply to beneficiaries under non-DOJ-funded programs.

² As mentioned in Section I of this Compliance Review Report, when the OHA was created in 2011, it adopted several functions that were previously managed by the Oregon DHS. Consequently, several DHS policies remain applicable to OHA and its components.

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 OHA's equitable treatment of faith-based organizations, the Compliance Review focused on two issues: (1) the process for making awards to applicant faith-based organizations, and (2) the 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 in Section I of this Compliance Review Report, in FY 2009 and FY 2010, the OHA administered funding through the EUDL Block Grant program. EUDL Block Grants Support three types of activities: law enforcement task forces, media campaigns, and innovative programs. In Oregon, eligible applicants must be counties or tribes with an existing "financial aid agreement" in place between the state government and the county or tribal government; OHA staff informed the OCR that virtually all counties and tribal governments are covered under an existing financial aid agreement, so for all intents and purposes, all county and tribal governments are eligible to apply for EUDL funds. Consequently, faith-based organizations are not eligible to apply directly to the OHA. Successful applicants must propose activities in one of the six following areas: facilitation of community partnerships, minor decoy operations, party patrol operations, shoulder tap (stranger purchase) operations, alcohol retailer education programs, or strategic media advocacy.

The OHA uses members of the EUDL Advisory Committee Board to help review applications; the Advisory Board is made up of representatives from law enforcement, tribes, county service providers, community mental health associations, and the state senate. Reviewers score applications using a score sheet based on the EUDL funding priorities; the highest scored applicants receive funding. The score sheet does not address civil rights issues, and past civil rights violations would not be captured in the application review process.

Once a county or tribe is awarded a grant, it can either conduct the project activities itself through its own community mental health association and law enforcement agency, or it can further sub-award the funds. If the county or tribe chooses to sub-award its grant, a faith-based organization may be in the sub-award applicant pool. Some counties and tribes have asked OHA to assist it in sub-awarding the funds, but the OHA is not necessarily involved in this process. Therefore, the OHA does not necessarily play a role in reviewing applications from entities, including faith-based organizations, that will conduct the local program activities.

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

As mentioned above, faith-based organizations are not eligible to apply for EUDL grants directly to the OHA, although they may receive a sub-award from a county or tribal subrecipient. No faith-based organizations applied for sub-awards during the compliance review period. However, even if a faith-based organization had received a sub-award, the OHA has no procedures other than the standard assurances for ensuring that faith-based organizations comply with the applicable federal civil rights laws, including the Equal Treatment Regulations.

II. Recommendations

The OHA already has some procedures in place for monitoring the civil rights compliance of its subrecipients. To strengthen the OHA's monitoring efforts, the OCR offers the following recommendations: (1) amend the required Federal Terms and Conditions to include all of the civil rights laws that the OCR enforces, (2) inform subrecipients of DOJ's EEOP requirements, (3) monitor for compliance with federal civil rights laws during onsite visits, (4) provide comprehensive training on federal civil rights laws, and (5) clarify the application of existing complaint procedures, and amend them where necessary.

A. Amend the Required Federal Terms and Conditions to Include all of the Civil Rights Laws that the OCR Enforces

The OCR recommends that the OHA amend its Required Federal Terms and Conditions to include a comprehensive and accurate description of the civil rights statutes and regulations with which subrecipients must comply. These civil rights statutes include the non-discrimination requirements of the applicable program funding statute (e.g.: the Omnibus Crime Control and Safe Streets Act and Juvenile Justice and Delinquency Prevention Act); Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the American's with Disabilities Act of 1990, Title IX of the Education Amendments of 1972; and the Age Discrimination Act of 1975. Further, the OHA should direct subrecipients to the implementing regulations of these statutes, and other civil rights authorities, such as relevant Executive Orders and DOJ Guidance. These include Department of Justice Nondiscrimination Regulations 28 C.F.R. Part 42, Subparts C, D, E, and G; Department of Justice Regulations on Disability Discrimination, 28 C.F.R. Part 35 and Part 39; Executive Order 13279, as amended, and its implementing regulations Equal Treatment for Faith-Based Organizations at 28 C.F.R. Part 38; and Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (June 18, 2002).

B. Inform Subrecipients of DOJ's EEOP Requirements

As mentioned in Section I.A. of this Compliance Review Report, the description of the EEOP requirements in the Required Federal Terms and Conditions reflect the regulations of the U.S. Department of Labor. However, the OHA should also describe the DOJ's Equal Employment Opportunity Program as described in 28 C.F.R. Pt. 42 Subpart E. DOJ's regulations define the subrecipients that must maintain an EEOP as follows: (1) the subrecipient is a state or local government agency or any business; and (2) the subrecipient has 50 or more employees; and (3) the recipient receives a single award of \$25,000 or more. A recipient that is required to *maintain* an EEOP must *submit* it to the OCR if it receives a single award of \$500,000 or more. Once a subrecipient determines its EEOP obligations, the OHA should ensure that the appropriate documentation is submitted to the OCR. If a subrecipient is exempt from maintaining an EEOP, that exemption must be certified to the OCR. Additionally, if a subrecipient must maintain an EEOP, but is exempt from submitting it, that exemption must be certified to the OCR as well. The OCR has a sample EEOP Certification Form available for subrecipients, which can be accessed at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>. The OCR recommends that the OHA requires subrecipients to use the OCR's Certification Form when certifying their exemption from the requirement to complete an EEOP or their exception from the requirement to submit an EEOP. We further recommend that the OHA instructs subrecipients to submit certifications or EEOPs directly to the OCR, although the OHA may wish to receive a copy for

monitoring purposes. OCR requires that subrecipients complete their EEOP obligations within sixty days of receiving an award, and renew these obligations every two years after that.

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

Pursuant to the OHA's responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the OHA should expand the civil rights component of its onsite monitoring visits to encompass more than its current questions about litigation, EEOC complaints, and LEP plans. The OHA should be sure to evaluate a number of civil rights requirements that are binding on recipients of federal funding (e.g., 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 OCR, 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 OHA should ask questions on 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 on the basis of religion. The OCR has developed the enclosed Federal Civil Rights Compliance Checklist that contains relevant questions regarding civil rights compliance; the OHA may wish to adapt the checklist in creating its own monitoring tools.

D. Provide Comprehensive Training on Federal Civil Rights Laws

To ensure that subrecipients fully understand their obligations under federal civil rights laws, such as the obligation to comply with the DOJ's Equal Treatment Regulations, to provide services to LEP individuals, and to provide the OCR with findings of discrimination issued by a federal or state court or federal or state administrative agency on the basis of race, color, religion, national origin, or sex, the OHA should provide periodic training programs for its subrecipients on the applicable federal civil rights laws. The OHA should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the OHA provides the training in person, during a teleconference, or through other means. The OCR is available to provide the OHA with technical assistance in developing civil rights training programs. Toward that end, the OCR has developed several online training modules that the OHA may use or adapt to train its staff and subrecipients. This can be found at the OCR website at <http://www.ojp.usdoj.gov/about/ocr/assistance.htm>.

E. Clarify Coverage of Existing Complaint Procedures and Amend where Necessary

The state of Oregon has written policies in place for receiving and investigating discrimination complaints in employment, housing, public accommodations and trade schools; OHA has written policies and complaint procedures for its own employees; and the DHS has policies and procedures for clients. However, it is unclear which, if any, of these policies or procedures apply to the beneficiaries of OHA or the employees and beneficiaries of subrecipients. The OHA should clarify which policies and procedures it intends to be accessed by its own beneficiaries and the employees and beneficiaries of its subrecipients, and develop a method for notifying those individuals of the appropriate policies. By either amending its current policies, or by developing new ones, the OHA should adopt a method for addressing discrimination complaints

from OHA beneficiaries and the employees and beneficiaries of subrecipients that includes at a minimum the following elements:

- designating a coordinator who is responsible for overseeing the complaint process;
- notifying subrecipients' employees and beneficiaries of prohibited discrimination in funded programs and activities and the OHA's policy and procedures for handling discrimination complaints;
- establishing written procedures for receiving discrimination complaints from subrecipients' employees and beneficiaries;
- referring each complaint to the appropriate agency for investigation and resolution, such as the U.S. Equal Employment Opportunity Commission or the Oregon Bureau of Labor and Industries, or referring the complaint to the OCR, which will review the complaint and work with the OHA to resolve the complaint;
- notifying the OCR in writing when the OHA refers a discrimination complaint to another agency or when the OHA investigates the complaint internally; and
- training OHA program staff members on the responsibility to refer discrimination complaints, or potential discrimination issues, to the OHA's complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

Information about the applicable laws, complaint forms, and the investigative process is available at the OCR's website at www.ojp.usdoj.gov/ocr/crc. Additionally, the OCR has drafted the enclosed template complaint procedures that the OHA may find helpful as it develops procedures for addressing discrimination complaints from employees and beneficiaries of subrecipients.

III. Conclusion

We find that the OHA has taken steps to comply substantially with the federal civil rights laws that the OCR enforces. However, it should implement the recommendations set forth above to ensure it is in compliance with all federal civil rights laws. On request, the OCR is available to provide technical assistance to the OHA in addressing the concerns raised in this Report. Immediately upon receipt of this letter, we ask that a responsible OHA official contact Attorney-Advisor Debra Murphy to develop a timeline for implementing the OCR's recommendations.

Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Murphy at 202-305-0667.

Sincerely,

/s/

Michael L. Alston
Director

Enclosures

