



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

November 29, 2011

VIA CERTIFIED MAIL

Omar Negrón Judice
Commissioner
Office of the Commissioner for Municipal Affairs
255 Ponce de León Avenue
Esquina Bolivia, MCS Plaza Building
Hato Rey, Puerto Rico 00917

Re: Compliance Review of Office of the Commissioner for Municipal Affairs
Docket No. 11-OCR-0459

Dear Mr. Negrón:

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, 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 Office of the Commissioner for Municipal Affairs (OCMA or Office). Of particular interest to the OCR is the OCMA'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 September 21, 2011, the OCR conducted an onsite visit with the OCMA in Hato Rey, Puerto Rico, to interview management and program staff; we also provided a training program for Office representatives about the federal civil rights laws that the OCR enforces and effective

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

In regard to the limited scope of this Compliance Review, the OCR concludes that the OCMA 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, and (4) complaint procedures for responding to certain discrimination allegations. The following Compliance Review Report includes recommendations for improving the OCMA'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 OCMA'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 OCMA'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 OCMA uses in connection with its administration of the following programs: (1) the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Title V Community Prevention Grants (Title V), and (2) the OJJDP's Title II Formula Grants (Title II).¹ In order to receive DOJ funds, a successful applicant must sign a grant agreement, which contains the following language regarding civil rights laws:

¹ The OCMA also receives funds through the OJJDP's Juvenile Accountability Block Grants program (JABG);

CLAUSE THIRTEEN: “THE ORGANIZATION” agrees to comply with all provisions set forth by the “Juvenile Justice and Delinquency Prevention Act” of 1974, as amended; the provisions set forth by “Title VI of the Civil Rights Act” of 1964; Section 504 of the “Rehabilitation Act” of 1973, as amended; “Title IX of the Education Amendments” of 1972; the “Age Discrimination Act” of 1975; the “Department Of Justice Non-Discrimination Regulations” 28 CFR Part 42, Sub parts C, D, E, and G and all local and federal applicable regulations.

* * *

CLAUSE SIXTEEN: “THE ORGANIZATION” understands that it cannot act in any discriminatory manner on the basis of race, sex, age, or religious belief.

CLAUSE SEVENTEEN: In case “THE ORGANIZATION” has more than fifty (50) employees, it must develop an Equal Employment Opportunity Program, as required by 28 CFR 42.301 et seq.

(OCMA, Title II JJDPA Contract, Contract No. 2012-004584, at 4-5.)

While the OCR commends the OCMA for seeking to notify all subrecipients of their federal civil rights obligations, the Office’s grant agreement fails to comprehensively address certain applicable civil rights requirements. For example, as discussed below in Recommendation A, the grant agreement does not but should:

- reference the Equal Treatment Regulations in describing applicable civil rights provisions;
- notify subrecipients of their obligation to designate a contact person who is responsible for meeting all civil rights requirements and serving as a liaison with the OJJDP and the OCR. 28 C.F.R. § 31.202(a)(1) (2010);
- notify subrecipients that they must submit to the OCR either an Equal Employment Opportunity Plan (EEOP) or the OJP’s Certification Form stating that they are eligible for a full or partial exemption from the EEOP requirement.

however, the Office does not subaward these funds to local units of government or to community-based groups, such as faith-based organizations.

See id. §§ 31.202(b)(2), 42.305;

- inform subgrantees of affected persons' rights to file a complaint of discrimination with the OCR for investigation. *See id.* § 31.202(b)(3); and
- notify subrecipients that they should forward to the OCR any finding of discrimination against the recipient issued by a federal or state court or federal or state administrative agency on the grounds of race, color, religion, national origin, or sex. *See id.* §§ 31.202(b)(5), 42.204.

2. Onsite Visits and Other Monitoring Methods

The OCMA relies on an internal subgrantee manual to guide its monitoring efforts. In that manual, the Office identifies various obligations, including those related to civil rights compliance, governing a subrecipient's receipt of DOJ funds. During a grant period, the OCMA conducts at least one in-depth monitoring review of each subgrantee, which includes completion of a desk review monitoring instrument, an onsite review monitoring instrument, and a monitoring report.² The Office may visit a specific subrecipient more frequently if that organization requires additional guidance on appropriately administering its grant award. While the OCMA has a rigorous desk and site review process, in conducting these reviews, the Office does not determine whether a subgrantee is in compliance with its civil rights obligations.

3. Training and Technical Assistance

Before releasing any Title V or Title II funds, the OCMA meets with successful applicants to review their obligations under the governing grant agreement. While this orientation session covers applicable fiscal and programmatic requirements, it does not describe the civil rights obligations that apply to the receipt of federal financial assistance from the DOJ. The Office also provides ongoing technical assistance to subrecipients when it conducts desk reviews and onsite visits and is available by e-mail and telephone to respond to subrecipient questions 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 OCMA and its subrecipients.

The OCMA's response to the OCR's data request states that the Office has a nondiscrimination policy that applies to all of its employees and prohibits discrimination based on age, race, sex,

² The monitoring instruments do not address applicable civil rights requirements.

and nationality.³ At the inception of their employment with the Office, new employees receive a copy of the policy as well as training on its contents. An employee can file a discrimination complaint with the Office's human resources department. In monitoring subrecipients, the OCMA does not evaluate whether subrecipients have adequate employment discrimination complaint procedures that are communicated to their employees. Several external agencies can receive, investigate, and resolve employment discrimination complaints from OCMA or subrecipient employees. The Puerto Rico Department of Labor, Discrimination Unit, enforces those provisions of Puerto Rico law that prohibit discrimination in employment on the basis of race; color; sex; social or national origin; social condition; political affiliation; political or religious ideology; or being a victim or being perceived as a victim of domestic violence, sexual aggression, or stalking. P.R. Laws Ann. tit. 29, § 146 (2010). In certain circumstances, an OCMA or subgrantee employee can also file an employment discrimination complaint with the Equal Employment Opportunity Commission (EEOC) or the OCR.

The OCMA does not provide services or benefits to members of the public, beneficiaries, or participants, and as such does not have procedures regarding services discrimination complaints. In monitoring subgrantees, the Office does not require organizations to have a policy, procedure, or protocol that addresses handling any services discrimination complaints they receive. In certain circumstances, a subrecipient beneficiary can also file a services discrimination complaint with the OCR, the Puerto Rico Citizen's Advocate Office, or the Puerto Rico Civil Rights Commission.

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) (2010). 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 OCMA'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.

³ In its response to the OCR's request for related written materials, the OCMA only produced its policy prohibiting sexual harassment in the workplace. To date, the OCR has not received any policies prohibiting discrimination, the definition of which is broader than harassment, based on age, race, sex, or nationality.

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

While the OCMA separately subawards Title V and Title II funds, it uses similar processes for both programs.⁴ For each program, the Office issues a request for proposal, which it announces through notices in two general circulation newspapers. It also invites interested organizations to attend a presentation regarding the application process. At that session, the Office distributes written materials that explain how an organization can effectively seek awards under the Title V and Title II grant programs. Once organizations apply for funds, the OCMA relies on a three-tier review process. Initially, a five-member evaluation committee, which is created by the Office Commissioner, assesses each proposal based on an objective assessment tool. After evaluating the submissions, the committee makes recommendations based on the applicants' scores and the amount of available funds. Next, the State Advisory Group (SAG), which is a required advisory body under the Juvenile Justice and Delinquency Prevention Act, evaluates and may refine the committee's recommendations. Finally, the OCMA Commissioner makes selection decisions based on the recommendations provided by both the committee and the SAG. If the OCMA declines to support a proposal, it sends a letter to the applicant that explains why the Office denied its application and provides information about how to appeal the adverse decision.

In reviewing the inclusion of faith-based organizations in the subaward process for the Title V and Title II programs, it is important to emphasize that these juvenile justice programs limit the ability of such groups to apply to the OJP or the Office for specific funds as follows:

- **Title V Program:** Faith-based organizations are statutorily ineligible to apply directly to the OJJDP or the Office for Title V funds. *See* 42 U.S.C.A. § 5783(a) (West 2010). The OJJDP, however, encourages faith-based organizations to access such funds by partnering with units of local government in developing the required local delinquency prevention plan and implementing the proposed prevention activities.
- **Title II Program:** Faith-based organizations are statutorily ineligible to apply directly to the OJJDP for Title II funds. *See id.* §§ 5631-33. The OJJDP, however, encourages faith-based organizations to respond to requests for proposal from the SAA.

In fiscal year 2011, one faith-based group applied for and received Title II funding.⁵ In fiscal year 2012, two faith-based groups applied for Title II funding; the OCMA awarded funds to one of these organizations because its application contained sufficiently high scores on the Office's assessment tool.

⁴ The Title V and Title II programs focus on assisting units of local government to reduce risks and to enhance protective factors to prevent youth at risk from becoming delinquent and entering the juvenile justice system.

⁵ The OCMA identifies an organization as being religious in nature based on the information the group submits in its application for funds.

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 Title V and Title II program funds, the OCMA does not monitor whether its faith-based subgrantees provide services consistent with these restrictions.

II. Recommendations

The OCMA already has in place a number of procedures to monitor the compliance of its subrecipients with various grant requirements. To strengthen the Office's civil rights monitoring efforts, the OCR offers the following four recommendations: (1) modify the civil rights/nondiscrimination provisions in its grant agreement, (2) refine its monitoring protocols to include additional items regarding federal civil rights laws, (3) provide consistent training to all subrecipients regarding their obligations to comply with federal civil rights laws, and (4) develop a comprehensive policy for addressing discrimination complaints.

A. Modify the Civil Rights/Nondiscrimination Provisions in Grant Agreement

The OCMA 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 continue to 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 (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).

Recipient will designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as a liaison in all civil rights matters with the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs and the Office for Civil Rights (OCR), Office of Justice Programs.

Recipient will inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with the OCR for investigation.

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 Office of the Commissioner for Municipal Affairs (OCMA).

Recipient will provide an Equal Employment Opportunity Plan (EEO) to the OCR and the OCMA, if required to submit one; otherwise, it will provide a certification to the OCR and the OCMA that it has a current EEO on file, if required to maintain one. For public grantee agencies receiving less than \$25,000, or public grantee agencies 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 Office may also wish to add a sentence to the 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. Refine Monitoring Protocol

The OCMA is to be commended for its general efforts to monitor subrecipients through desk reviews and onsite visits, as well as for its use of monitoring forms. As part of its responsibility

to monitor the compliance of subrecipients with applicable federal civil rights laws, the Office should continue to ensure that it conducts periodic monitoring of its subrecipients and should strengthen its review of issues involving civil rights compliance. Going forward, it should refine its monitoring materials to ensure that it evaluates 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; and whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act and Title IX of the Education Amendments of 1972). The monitoring instruments should also include questions that evaluate whether the subrecipient is complying with the DOJ's Equal Treatment Regulations, including the prohibitions against using federal funds to engage in inherently religious activities and discriminating against program beneficiaries on the basis of religion. In an effort to assist the OCMA 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 OCMA is making a concerted effort to provide training to its subrecipients on fiscal and programmatic aspects of grant management. It should also ensure, through periodic and mandatory training, that all subgrantees are aware of their obligations under applicable federal civil rights laws. The OCMA 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 is available to provide the Office with technical assistance in bolstering its civil rights training programs. In addition, the OCMA should continue to provide ongoing technical assistance to subrecipients regarding their statutory and contractual obligations.

D. Develop Comprehensive Policy for Addressing Discrimination Complaints

As previously noted, the OCMA has procedures in place to respond to discrimination complaints from its own employees, and the EEOC, the OCR, the Puerto Rico Department of Labor, the Puerto Rico Citizen's Advocate Office, and the Puerto Rico Civil Rights Commission are also available to resolve certain discrimination complaints.⁶ Nonetheless, the Office has an obligation as a recipient of federal financial assistance to have in place a policy that comprehensively addresses how it responds to employment and services discrimination complaints that it receives from 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:

⁶ To ensure that its employment discrimination policy accurately describes the protections afforded its employees under the federal laws that the OCR enforces, the OCMA should revise this policy to expressly prohibit discrimination based on color, national origin, religion, and disability.

- designating a coordinator who is responsible for overseeing the complaint process;
- notifying appropriate subrecipient employees and beneficiaries of prohibited discrimination in funded programs and activities and the OCMA's policy and procedures for handling discrimination complaints;
- establishing written procedures for receiving discrimination complaints from 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 OCMA program staff members on their responsibility to refer discrimination complaints or potential discrimination issues involving subrecipients to the Office's complaint coordinator for processing as soon as the alleged discrimination comes to their attention;
- 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 OCMA in developing a comprehensive complaint policy, the OCR has prepared sample procedures for responding to discrimination complaints, which are enclosed for the Office's review. While the OCMA'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 OCMA 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 OCMA official contact Attorney Advisor Christopher Zubowicz to develop a timeline and goals for implementing the OCR's recommendations.**

Omar Negrón Judice, Commissioner
Office of the Commissioner for Municipal Affairs
November 29, 2011
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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