



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

November 15, 2012

Judith Rex
Executive Director
Vermont Center for Crime Victim Services
58 South Main Street
Waterbury, Vermont 05676

RE: Vermont Center for Crime Victim Services Compliance Review (11-OCR-0352)

Dear Ms. Rex:

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) initiated a compliance review of all State Administering Agencies, including the Vermont Center for Crime Victim Services (VCCVS), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on VCCVS's compliance with applicable federal civil rights laws along with the VCCVS's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the VCCVS'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 October 25, 2011, the OCR conducted an onsite visit to the VCCVS's offices in Vermont, to interview VCCVS administrators and program staff on the federal civil rights laws that the OCR enforces. The OCR would like to thank the VCCVS staff for assisting OCR attorney Daphne Felten-Green during the onsite visit. On August 9, 2012, the OCR issued our Draft Compliance Review Report, and provided you with 30 days to correct any factual inaccuracies in the Draft Report. On November 14, 2012, VCCVS Grants Manager Arlene Averill informed the OCR that there were no inaccuracies in the Draft Report. Therefore, this serves as the Final Compliance Review Report.

In regard to the limited scope of our review, the OCR concludes that the VCCVS has taken steps to comply substantially with the federal civil rights laws that the OCR enforces. Nonetheless, we have concerns about the VCCVS's failure to inform subrecipients about EEO requirements, the sufficiency of on-site monitoring and training, and the accuracy of its standard assurance documents. The following Compliance Review Report includes recommendations for improving the VCCVS's methods for monitoring the civil rights compliance of subrecipients and ensuring that it meets its obligations under federal civil rights laws.

I. Overview

The VCCVS administers several grants from OJP's Office for Victims of Crime (OVC), including the Crime Victim Assistance Grants, the Crime Victim Compensation Grants, and the Outreach for Underserved Victims Grant. The VCCVS also administers several grants from DOJ's Office on Violence Against Women (OVW), including STOP Violence Against Women grants; the Sexual Assault Services Program grant; the Grants to Encourage Arrest and Enforcement of Protection Orders; the Rural Domestic Violence, Dating Violence, Sexual Assault and Stalking Assistance Program grant; and the Community Defines Solutions to Violence Against Women Program grant.

This Compliance Review Report first examines the VCCVS'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 VCCVS'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 DOJ are responsible for certifying that contractors and subrecipients under DOJ grant programs comply with the applicable federal civil rights laws. In reviewing the VCCVS's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the VCCVS used the following four tools: (1) certified 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 employment and the delivery of services.

1. Certified Assurances

Based upon information that the VCCVS provided in its Data Response and during the onsite portion of this Compliance Review, the VCCVS uses two documents to secure subrecipients' assurance to comply with applicable civil rights laws: (1) the Standard Grant Assurance, and (2) the Anti-Discrimination Assurance Form and Compliance Procedures [Anti-Discrimination Form]. As part of the application packet, an applicant signs OJP's Standard Assurances that have been approved by the U.S. Office of Management and Budget.

Once an applicant has been selected for funding, the recipients must sign the VCCVS's Anti-Discrimination Form, which contains several federal civil rights provisions.¹ First, by signing the Anti-Discrimination Form, subrecipients agree not to discriminate on the basis of race, color, national origin, religion, sex, age, disability or limited ability to speak English² in services and employment, and to comply with the Omnibus Crime Control and Safe Streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, Title IX of the Education Amendments of 1972, The Age

¹ The Anti-Discrimination Form also incorporates Vermont's state civil rights requirements, which extend protections to people on the basis of ancestry, sexual orientation, and place of birth.

² The version of the Anti-Discrimination Form that the VCCVS submitted with its Data Response did not include disability or limited ability to speak English as protected classes, but the VCCVS apparently added these two classes to a later version of the Anti-Discrimination Form. Note that the Title VI protections for persons who are limited in their English proficiency as a result of their national origin do *not* extend to employment.

Discrimination Act of 1975, DOJ's corresponding implementing regulations, DOJ's Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, and DOJ's regulations Equal Treatment for Faith-Based Organizations.³ The Anti-Discrimination Form further requires subrecipients to send all "adverse findings of discrimination within the last three years" to the VCCVS, which will forward them to the OCR; failure to do so could result in suspension or termination of funding. Lastly, the Anti-Discrimination Form contains procedures for processing complaints of discrimination from beneficiaries or employees of subrecipients; these and other Complaint procedures will be described in Section I.A.4. of the Compliance Review Report. Sections II.A.-C. contain recommendations for improving the VCCVS's assurance documents.

2. Onsite Visits and Other Monitoring Methods

In its Data Response, the VCCVS reported that it intends to visit each subrecipient every three years, but may conduct more frequent on-site visits to subrecipients that are experiencing problems. The VCCVS uses a written "site visit protocol" to guide its visits. This protocol involves questioning the subrecipients about its staffing, victim services, policies, and finances. The following questions pertain to civil rights:

- b. Does the program have written personnel policies and procedures?
- c. Does the program have a grievance procedure for victims and is it posted in waiting areas and included in victim information packets, and etc?
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- g. Are facilities physically accessible to people with disabilities?⁴

These questions could elicit information about employment non-discrimination policies, allegations of impermissible discrimination in services, and accessibility of facilities. Additionally, the VCCVS reported that during on-site visits, it may probe for more detail on the above questions, and would ask if there have been any findings of discrimination. Section II.D. of this Compliance Review Report offers suggestions for improving on-site monitoring for civil rights compliance.

3. Training and Technical Assistance

The VCCVS began to offer civil rights training in October, 2011, to all subrecipients. This half-day training, presented by two local attorneys, addressed non-discrimination requirements and complaint procedures. The training covered critical elements of a non-discrimination policy,

³ The version of the Anti-Discrimination Form that the VCCVS submitted with its Data Response did not contain a reference to the Equal Treatment Regulations or DOJ's LEP Guidance. It appears that the VCCVS added these provisions after the OCR began its Compliance Review.

⁴ A thorough examination of the physical accessibility of facilities receiving Federal financial assistance is beyond the scope of this compliance review. However, recipients shall comply with Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and Section 504 of the Rehabilitation Act (29 U.S.C. § 794), as they related to discrimination on the basis of disability in OJP funded programs or activities, and their implementing regulations at 28 C.F.R. Pt. 35 and 28 C.F.R. § 42.501 et seq.

options for accepting complaints, procedures for investigating complaints, and a framework for determining appropriate action. The OCR commends the VCCVS for taking this step toward training subrecipients in civil rights obligations. Section II.E. of this Compliance Review Report provides guidance for expanding on and improving civil rights training.

4. Complaint Procedures

As mentioned in Section I.A.1. of this Compliance Review Report, the VCCVS's Anti-Discrimination Form which all subrecipients sign, contains some complaint procedures. It directs subrecipients that receive complaints of employment or services discrimination to inform the Complainant of the options of filing with the U.S. Equal Employment Opportunity Commission, the Vermont Attorney General's Office, the Vermont Human Rights Commission, the VCCVS or the OCR, depending upon the type of discrimination and the time period. The Anti-Discrimination Form also informs subrecipients that all employers are required by Vermont State Statute to adopt a sexual harassment policy, which, if the employer has more than five employees, must include a description of the process for filing internal complaints; employers are also required to promptly investigate such complaints. Although the Anti-Discrimination Form invites subrecipients to send complaints to the VCCVS, it does not have procedures in place that address what it will do with a complaint if it gets one.

The VCCVS has also developed sample policies that subrecipients may adopt or adapt, which address alleged discrimination against the beneficiaries and employees of subrecipients.⁵ The sample employment and services policies are identical in most respects, and prohibit discrimination on the basis of race, color, religion, national origin, ancestry, place of birth, age, disability, sex, sexual orientation, gender identity, limited ability to speak English,⁶ or military service.⁷ These policies include procedures for reporting discrimination, procedures for investigating complaints, possible disciplinary and/or corrective action, and plans for training. Each policy is accompanied by a complaint form that may be used, although the policies also allow complaints to be made orally or via e-mail. The sample policies suggest the agency Director, or his/her designee, as the responsible official charged with investigating and resolving complaints.

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 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 VCCVS's equitable treatment of faith-based organizations, the Compliance review focused on two issues: (1) the process for making awards to applicants, including faith-based organizations, and (2) the

⁵ The VCCVS did not include these sample policies in its Data Response; rather, it appears that they were developed after the Compliance Review began.

⁶ Title VI prohibits discrimination in services on the basis of national origin, and DOJ's LEP Guidance details how this can extend to persons who are limited in their English proficiency. However, a recipient's obligation to take reasonable steps to provide meaningful access to its services by persons with limited English proficiency does not extend to employment.

⁷ Military service does not appear to be a protected class in Vermont, per se, although several state statutes address military employment preferences and equal pay for military service. See 3 V.S.A. § 310(f); 20 V.S.A. §§ 1543-1544, and 21 V.S.A. §§ 491-493.

procedures for ensuring that funded faith-based organizations comply with applicable federal civil rights laws.

1. The Process for Making Awards

In its Data Response, the VCCVS reported that until the advent of culturally specific grants, it had not opened its solicitation process to new applicants for several years, because it had not received any funding increases and wanted to protect the continuity of existing services. The VCCVS did receive additional funds through the American Recovery and Reinvestment Act [Recovery Act], but the influx of that funding coincided with cuts in state funding. As a result, the VCCVS used Recovery Act funds to maintain the funding levels of its existing subrecipients, and did not open solicitations for new applicants.

When each grant solicitation is released, the VCCVS sends a letter to all current subrecipients informing them of available funds and the target amounts to use when applying. The VCCVS attaches an application packet, which includes an application cover sheet, a budget summary and narrative document, and an application checklist. Once applications are submitted, they are reviewed by the VCCVS's financial managers and grant managers, who notify applicants of any deficiencies. Because solicitations are not competitive, there has been very little change over the years in subrecipients.

In FY 2007, the STOP Violence Against Women Formula Grant began requiring that of the 30% of funds that are to be allocated for victim services, 10% must be distributed to culturally specific community-based organizations. In response to that requirement, the VCCVS reached out to previously unfunded service providers to recruit new applicants who might be qualified for such funding. The VCCVS also asked its current subrecipients to suggest organizations, contacted organizations that represent Native American concerns, and otherwise contacted entities that provide services to underserved populations. The VCCVS developed a solicitation for the culturally-specific funds that described the successful applicant as offering "services to victims from a given culture or otherwise underserved community in Vermont."⁸ The VCCVS ultimately received applications from seven community-based organizations that provide culturally specific services, and selected the Association of Africans Living in Vermont (AALV) for funding. The AALV provides services to immigrants and refugees, irrespective of national origin, including integration education, workforce development, interpreter services and cross-cultural training. With the OVW funding, AALV partnered with local domestic violence and sexual assault service providers to extend those services to new Americans in Burlington.

VCCVS is not currently funding any faith-based organizations, and its application process has not been open to new applicants for some time. However, beginning in 2000, the VCCVS worked with the Vermont Ecumenical Society (VES) to explore possible collaborations for victims. The VES is an organization made up of representatives from several Christian denominations that tries to encourage local cooperation among churches. Although the VCCVS and the VES held several discussions and trainings to explore how the churches might support victim services, the VCCVS came to the conclusion that the faith community was more comfortable supporting existing service providers than applying for federal funds to start their

⁸ While DOJ supports culturally specific services, no recipient is relieved of its obligation not to discriminate on the basis of race, color, or national origin. Therefore, although a service provider may develop an expertise in serving a specific population that is defined by race, color or national origin, it may never *deny* services to otherwise eligible beneficiaries based upon any protected class.

own services for victims. Other than this, the VCCVS reports that it has taken no other measures to ensure that faith-based organizations are neither favored nor discriminated against in the funding process.

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

As mentioned in Section I.A.1., the VCCVS recently added a reference to DOJ's Equal Treatment Regulations to its Anti-Discrimination Form. Aside from that, the VCCVS reported that it has no procedures in place for ensuring that faith-based subrecipients comply with the Equal Treatment Regulations. As mentioned previously, the VCCVS has not funded any faith-based organizations up to this time.

II. Recommendations

The VCCVS already has some procedures in place for monitoring the civil rights compliance of its subrecipients, such as requiring subrecipients to sign its Anti-Discrimination Form, and training subrecipients in civil rights obligations. To strengthen the VCCVS's monitoring efforts, the OCR offers the following recommendations: (1) clarify and standardize the list of protected classes throughout VCCVS documents; (2) clarify to recipients OCR's requirement to submit findings of discrimination, (3) inform subrecipients of OJP's Equal Employment Opportunity Program guidelines, (4) monitor for compliance with federal civil rights requirements during on-site monitoring visits, (5) provide comprehensive training on federal civil rights laws, and (6) develop written procedures to address discrimination complaints from employees or beneficiaries of subrecipients.

A. Clarify and Standardize the List of Protected Classes throughout VCCVS Documents

In various parts of the VCCVS's Anti-Discrimination Form and sample complaint procedures, the VCCVS lists the following protected classes in various combinations: race, color, national origin, sex, age, disability, limited ability to speak English, ancestry, sexual orientation, gender identity, place of birth, and military status. Applicable federal law prohibits discrimination in services and employment on the basis of race, color, national origin, religion, sex, disability, and age. Further, the obligation under Title VI to take reasonable steps to provide meaningful access for persons who are limited in their English proficiency as a result of their national origin extends to services, not employment. The remaining protected classes appear in one or more of Vermont's state statutes. The OCR recommends that the VCCVS include all federal protected classes on its documents that govern DOJ subrecipients. The VCCVS may also wish to address State law on the same documents, but should be consistent throughout all documents.

B. Clarify to Recipients OCR's Requirement to Submit Findings of Discrimination

As mentioned in Section I.A.1. of this Compliance Review Report, the VCCVS's Anti-Discrimination Form instructs subrecipients to "adverse findings of discrimination" to the VCCVS, which will then forward them to the OCR. The correct requirement is that 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 ground of race, color, religion, national origin,

or sex against the recipient, the recipient will forward a copy to the OCR. 28 C.F.R. § 42.204(c). The OCR recommends amending its Anti-Discrimination Form to provide the correct description of this reporting requirement. The VCCVS may require subrecipients to send findings to the VCCVS, and then forward them to the OCR. .

C. Inform Subrecipients of OJP's Equal Employment Opportunity Program Guidelines

The VCCVS should inform subrecipients of DOJ's Equal Employment Opportunity Program (EEOP) Guidelines, at 28 C.F.R. pt. 42 Subpart E. The EEOP Guidelines require certain recipients to prepare and possibly submit to OCR an EEOP report comparing the race, national origin and sex of employment pool to the relevant labor market. The criteria for those subrecipients that must maintain an EEOP are 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 VCCVS 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 VCCVS 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 VCCVS instructs subrecipients to submit certifications or EEOPs directly to the OCR, although the VCCVS may wish to receive a copy for monitoring purposes.

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

As discussed in Section I.A.2. of this Compliance Review Report, the VCCVS is taking steps to ensure that subrecipients are complying with grant requirements by conducting periodic onsite monitoring visits. However, these onsite monitoring visits do not fully address federal civil rights laws. Pursuant to the VCCVS's responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the VCCVS should expand the civil rights component of its onsite monitoring visits to encompass more than its current questions about personnel policies, grievance procedures, and accessible facilities. VCCVS 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 VCCVS 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 VCCVS may wish to adapt the checklist in creating its own monitoring tools.

E. Provide Comprehensive Training of Federal Civil Rights Laws

The VCCVS recently started offering civil rights training to subrecipients, but should expand on current efforts to ensure that subrecipients fully understand their obligations under federal law. Training should cover 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. VCCVS should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the VCCVS provides the training in person, during a teleconference, or through other means. To assist in this process, the OCR has developed online training that the VCCVS can either use or adapt for its own purposes. Those training videos can be found at <http://www.ojp.usdoj.gov/about/ocr/assistance.htm>.

F. Develop Comprehensive Complaint Procedures

The VCCVS's Anti-Discrimination Form informs all subrecipients that an employee or beneficiary may file a Complaint with the VCCVS, as well as the Vermont Attorney General's Office, the Vermont Human Rights Commission, the OCR or the EEOC. However, the VCCVS does not have procedures in place that address what it will do with a complaint if it gets one. While the VCCVS developed very thorough model policies and procedures that may be adopted or adapted by subrecipients, the VCCVS does not have such procedures for itself. Accordingly, the VCCVS should adopt a policy for processing the complaints it receives from employees or 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 VCCVS'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, the Vermont Human Rights Commission, or the Vermont Attorney General's Office, or referring the complaint to the OCR, which will review the complaint and work with the VCCVS to resolve the complaint;
- notifying the OCR in writing when the VCCVS refers a discrimination complaint to another agency or when the VCCVS investigates the complaint internally; and
- training VCCVS program staff members on the responsibility to refer discrimination complaints, or potential discrimination issues, to the VCCVS's complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

The OCR has drafted the enclosed template complaint procedures that the VCCVS may find helpful as it develops procedures for addressing discrimination complaints from employees and

beneficiaries of subrecipients. However, the VCCVS may also wish to adapt the sample policies that it provides to subrecipients for its own use.

III. Conclusion

The OCR finds that the VCCVS 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 VCCVS in addressing the concerns raised in this Report. Upon receipt of this letter, we ask that a responsible VCCVS official contact Attorney-Advisor Debra Murphy to develop a timeline and goals 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