



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

VIA CERTIFIED RETURN RECEIPT REQUESTED

May 15, 2012

J. Norbert Federspiel, Director
West Virginia Division of Justice and Community Services
1204 Kanawha Blvd., East
Charleston, WV 25301

**Re: West Virginia Division of Justice and Community Services (08-OCR-0458) -
FINAL**

Dear Mr. Federspiel:

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 (SAA), including the West Virginia Division of Justice and Community Services (DJCS),¹ in accordance with federal regulation 28 C.F.R. § 42.206. The review focused on (1) DJCS's compliance with applicable federal civil right laws and (2) the DJCS's monitoring procedures. Of particular interest to the OCR was the DJCS's implementation and monitoring of the Department of Justice's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 28 [hereinafter Equal Treatment Regulations].

On April 7, 2009, the OCR conducted an onsite visit to the DJCS's office in Charleston, West Virginia to interview DJCS's administrators and to conduct a training program on federal civil rights laws that the OCR enforces. On the same day, the OCR conducted onsite visits to two DJCS subgrantees: (1) the HOPE Community Development Corporation (HOPE CDC) and (2) Kanawha Institute for Social Research and Action, Inc. (KISRA). The OCR would like to thank DJCS staff for assisting the OCR during its onsite visit.

Based on the DJCS's responses to our Data Request and the information we gathered while onsite, the OCR concludes that the DJCS is not fully in compliance with the requirements of the federal civil rights laws that the OCR enforces. Specifically, we recommend that the DJCS: (1) strengthen its standard assurances by expanding

¹ At the time the OCR initiated its review, the SAA was known as the West Virginia Division of Criminal Justice Service (DCJS). In July 2010, the State of West Virginia legislature renamed the SAA as the West Virginia Division of Justice and Community Services.

references to applicable federal civil rights laws, (2) revise its monitoring methods, (3) establish civil rights training for all of its subgrantees, and (4) develop written complaint policies for responding to employment and service discrimination complaints against subgrantees. The following Compliance Review Report includes recommendations for improving the DJCS's methods for informing subgrantees of their federal civil rights obligations and ensuring compliance with federal civil rights laws.

On April 25, 2012, the OCR issued a draft Compliance Review Report to the DJCS inviting the DJCS to provide comments regarding any factual inaccuracies in the Report. On May 15, 2012, the DJCS notified the OCR that it did not have any corrections to the facts stated in the draft Report. The OCR issues this Compliance Review Report as final.

Compliance Review Report

I. Overview and Recommendations

The Compliance Review Report first examines the DJCS's procedures for monitoring whether subgrantees 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 DJCS's implementation of the DOJ's Equal Treatment Regulations.

The DJCS administers the following DOJ grant programs: Justice Assistance Grants (JAG), Project Safe Neighborhood--State and Local Gun Crime Prosecution Assistance (PSN), Paul Coverdell Forensic Science (Paul Coverdell), National Criminal History Improvement Program (NCHIP), Residential Substance Abuse Treatment (RSAT), Services, Training, Officers, and Prosecutors (STOP), Bulletproof Vest Partnership, Crime Victim Assistance and Compensation Formula Grants (Victim Assistance), Enforcing Underage Drinking Laws (EUDL), Juvenile Accountability Block Grant (JABG), Title II Juvenile Justice Delinquency Prevention Formula Grant (Title II), and Title V Community Prevention Juvenile Justice Delinquency Prevention Grant (Title V).

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

Recipients of federal financial assistance from the DOJ are responsible for certifying that contractors and subgrantees comply with applicable federal civil rights laws. In reviewing the DJCS's general efforts to ensure subgrantees' compliance with federal civil rights obligations, the OCR examined how the DJCS 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 against subgrantees.

1. Standard Assurances

The DJCS solicitations contain a document entitled “Standard Conditions and Assurances” that address compliance with federal civil rights obligations.

Paragraph seven of the Standard Conditions and Assurances states that the “[g]rantee will comply with all federal civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended. These laws prohibit discrimination on the basis of race, color, religion, national origin, and sex in the delivery of services.”

Paragraph seven of the Standard Conditions and Assurances requires the subgrantee to comply with the Justice Department’s guidance for providing services to limited English proficient (LEP) beneficiaries:

National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, grantees will take reasonable steps to ensure LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

Grantees are encouraged to consider the need for language services for LEP persons served or encountered both in developing their proposals and budgets and in conducting their programs and activities.

Additionally, paragraph thirty-five of the Standard Conditions and Assurances again requires the subgrantee to provide LEP persons with meaningful access to their programs and activities and advises the subgrantee to visit www.lep.gov for more information.

Paragraph forty-two of the Standard Conditions and Assurances requires the subgrantee to comply with DOJ’s Equal Opportunity Program (EEOP) regulations as follows:

Each grantee certifies, that it has executed and has on file, an Equal Employment Opportunity Plan which conforms with the provisions of 28 CFR Section 42.301, et seq., Subpart E, or that in conformity with the foregoing regulations, no Equal Employment Opportunity Plan is required. All EEOP finds should be reported to the Office for Civil Rights, Office of Justice Programs, US Department of Justice, 810 7th Street, N.W., Washington, D.C. 20531.

Only the Victim Assistance and STOP solicitations’ Standard Conditions and Assurances contain paragraph seventy requiring the subgrantee to comply with the Equal Treatment Regulations:

Such organizations receiving . . . funds must ensure that services are offered to all victims without regard to religious affiliation and that the receipt of services is not contingent upon participation in a religious activity or event. Furthermore, all religious activities must be separate in time or place from the . . . funded project. Further, participation in such activities by individuals receiving services must be voluntary.

Recommendation

The DJCS should ensure that subgrantees agree to standard assurances that accurately reflect all of their federal civil rights obligations. To this end, the DJCS should revise and standardize its Standard Conditions and Assurances.

The DJCS should expand and revise paragraph seven of its Standard Conditions and Assurances to include the following or substantially similar language, which would apply to all applicants for and subgrantees of DOJ funding, regardless of the amount of federal financial assistance at issue:

Grantee will 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. 42 (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); Ex. 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 neighborhood organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations).

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the grantee will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and Division of DJCS.

The DJCS should revise paragraph forty-two of its Standard Conditions and

Assurances to provide the following guidance to subgrantees about EEOPs:

The grantee will provide an Equal Employment Opportunity Plan (EEOP) to the Office for Civil Rights, Office of Justice Programs (OCR) and the DJCS, if it has received a single reward of \$500,000 or more. If the grantee receives \$25,000 or more and has 50 or more employees, it will maintain a current EEOP on file and submit an EEOP Certification Form to the OCR, certifying that its EEOP is on file. 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, the grantee will provide an EEOP Certification Form to the OCR certifying it is not required to submit or maintain an EEOP. EEOP Certification Forms are available at: <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>:

The DJCS's Standard Conditions and Assurances should include the following , or substantially similar language, on compliance with the Equal Treatment Regulations in the Standard Conditions and Assurances of solicitations open to non-profit organizations:

Grantees must ensure that services are offered without regard to religious affiliation and that receipt of services is not contingent upon participation in a religious activity or event. Furthermore, all religious activities must be separate in time or place from the funded project. Participation in such activities by individuals receiving services must be voluntary.

2. Onsite Visits and Other Monitoring Methods

The DJCS does not have comprehensive methods for monitoring subgrantees compliance with federal civil rights laws. According to information the OCR obtained during the onsite visit, STOP grant monitors attempt to conduct onsite visits of STOP subgrantees at least once during a grant cycle. STOP grant monitoring staff use a programmatic monitoring instrument that has three questions that somewhat relate to federal civil rights compliance: (1) is the program accessible for non-English speaking victims; (2) does the subgrantee have an EEOP Short Form on file; and (3) has the EEOP been submitted to proper authorities?

As an alternative to onsite visits of STOP subgrantees, when staff are not able to conduct an onsite visit during the grant cycle, staff informed the OCR that they send a monitoring tool called "Subgrantee Self Monitoring Report" to STOP subgrantees to complete and send to the DJCS in lieu of the onsite visit. The OCR found that the Subgrantee Self Monitoring Report provided to the OCR contains two questions that also somewhat pertain to compliance with federal civil rights requirements: (1) briefly explain how the program is accessible for non-English speaking victims with disabilities; and (2) explain

how the program is accessible for non-English speaking victims and victims whose primary language is not English.

The DJCS does not monitor the other DOJ grant programs to ensure subgrantees comply with federal civil rights laws.

Recommendation

As part of its responsibility to monitor the compliance of all subgrantees with applicable federal civil rights laws, the DJCS should have a mechanism in place to evaluate whether subgrantees are meeting their federal civil rights obligations. The DJCS should add a civil rights component to its monitoring procedures beyond the questions pertaining to whether the subgrantee has submitted an EEOP or provides services to LEP persons. Therefore, the DJCS should develop and utilize a federal civil rights laws compliance checklist to determine: (1) whether the subgrantee is required to maintain an EEOP, has sent one to the OCR for review (if required), or provided an EEOP Certification Form; (2) whether the subgrantee has findings of discrimination to report to the DJCS or the OCR; (3) whether the subgrantee has developed a language assistance plan for providing services to LEP individuals; (4) whether the subgrantee has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act; or (5) whether the subgrantee has a grievance procedure and designated civil rights coordinator as required by section 504 of the Rehabilitation Act and Title IX of the Education Amendments of 1972. Additionally, the DJCS should be sure to include questions on this checklist to evaluate whether the subgrantee is complying with DOJ's Equal Treatment Regulations, including the prohibitions against using federal funds to engage in inherently religious activities or to discriminate against program beneficiaries based on religion. The OCR has developed the attached federal civil rights compliance checklist. The DJCS may wish to use this checklist for monitoring purposes or incorporate this checklist into its existing monitoring instruments.

3. Training and Technical Assistance

According to its Data Request Response, the DJCS does not provide any training to subgrantees about federal civil rights obligations.

Recommendation

The DJCS should provide mandatory training for every subgrantee at least once during a grant cycle, whether the DJCS staff provides training in person, by way of teleconference, or through other means. The DJCS should ensure that subgrantees are aware of 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 based on race, color, religion, national origin, sex, or disability. To assist the DJCS in developing training, the OCR has developed an

online training resource available at: <http://www.ojp.usdoj.gov/about/ocr/assistance.htm>.
The OCR is also available to provide additional technical assistance to the DJCS in developing a training program.

4. Complaint Policies

The DJCS does not have written policies for responding to employment or service discrimination complaints against subgrantees.

During the OCR's visit, DJCS staff with whom the OCR spoke explained that if an employee of a subgrantee sought to submit a complaint alleging discrimination by a subgrantee, the complainant could file a complaint with the West Virginia Human Rights Commission. The DJCS, however, has no policy in writing, specifically notifying all employees of subgrantees of this procedure.

As to service discrimination complaints, the DJCS staff with whom the OCR spoke did not discuss having any procedures or written policies for program beneficiaries to submit a service discrimination complaint against a subgrantee.

Recommendation

Although DJCS staff informed the OCR of a procedure for responding to employment discrimination complaints from employees of its subgrantees, the DJCS should implement comprehensive written policies to address how it will respond to employment and service discrimination complaints received from employees and beneficiaries of its subgrantees.

The DJCS should develop comprehensive complaint policies that, at a minimum, include the following elements:

- 1) designating a coordinator who is responsible for overseeing a complaint process and reviewing initial complaints;
- 2) notifying DJCS employees and subgrantees of prohibited discrimination in the DJCS's programs and activities and the DJCS's policy and procedure for handling discrimination complaints;
- 3) establishing written procedures for receiving discrimination complaints from employees and clients, customers, or program participants of subgrantees implementing funding from the DOJ;
- 4) investigating each complaint internally, or referring each complaint to the appropriate agency for investigation and resolution, such as the U.S. Equal Employment Opportunity Commission, a local or state human rights commission, or the Office for Civil Rights (OCR), Office of Justice Programs. If the complaint is referred to an agency other than the OCR, the DJCS will notify the OCR of the referral;

- 5) notifying the complainant that the complainant may also file a complaint with the OCR by submitting a written complaint to the following address: Office for Civil Rights; Office of Justice Programs; U.S. Department of Justice; 810 Seventh Street N.W.; Washington, DC 20531;
- 6) training DJCS program staff on their responsibility to refer discrimination complaints or potential discrimination issues, to the DJCS complaint coordinator for processing as soon as alleged discrimination comes to their attention; and
- 7) notifying employees and clients, customers, and program participants of prohibited discrimination and the procedures for filing a complaint of discrimination, and ensuring that subgrantees do the same.

The OCR has enclosed sample templates to assist the DJCS in developing its complaint policies. Information about the applicable laws, complaint forms, and the investigative processes are available at the OCR's website at: www.ojp.usdoj.gov/ocr/crc.

B. Monitoring Compliance with Equal Treatment Regulations

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 DJCS's equitable treatment of faith-based organizations, this Compliance Review focuses 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

According to staff with whom the OCR spoke, the DJCS's process for making awards varies among the different DOJ programs.

a. JABG, Title II, Title V, and EUDL Subgrantee Process

The Juvenile Justice State Advisory Group (SAG) oversees the issuance of Request for Proposals (RFPs) for JABG, Title II, Title V, and EUDL programs. When the SAG issues RFPs available to the public, the DJCS mails grant applications to county commissioners, boards of education, current grantees (across all DJCS's programs), mayors, police departments, sheriff departments, probation offices, prosecuting attorneys, domestic violence shelters, safe and drug-free community grantees, the West Virginia Supreme Court, and a running list of nonprofit organizations who have previously requested information. The DJCS also posts the grant applications on its website. The DJCS staff informed the OCR that the DJCS does not post or announce all RFPs each year. The SAG members may decide to issue RFPs to existing subgrantees in an effort to provide those subgrantees an opportunity to promote the sustainability of their programs.

When DJCS staff members receive proposals, the proposals are reviewed by DJCS staff for completeness and then by the SAG for programmatic merit. Once the SAG's review is completed, the SAG makes award recommendations to the Governor who makes the final award decision.

The OCR finds no evidence that the DJCS's process for awarding JABG, Title II, Title V, and EUDL subgrants discriminates against religious organizations in violation of the Equal Treatment Regulations. In FY2007, the DJCS awarded a Title V subgrant to a Faith-Based Organization (FBO), Team Agape for \$63,000 and a Title II subgrant to New Hope CDC for \$25,000. In FY2008, the DJCS awarded one Title II subgrant to a FBO, Kanawha Institute for Social Research and Action, Inc. (KISRA) for \$30,280.

b. STOP and Victim Assistance Subgrantee Process

The West Virginians Against Violence Committee (Committee) oversees the development, application, and assessment of the state's STOP and Victim Assistance grants. The Committee consists of representatives from the following entities: domestic violence coalitions, sexual assault coalitions, prosecution, law enforcement, the faith-based community, criminal justice based victim assistance programs, underserved population community, child abuse protection, and court personnel.

As a part of its duties, the Committee makes the decision to issue RFPs to the public, existing subgrantees, or to specific groups such as culturally specific organizations. When RFPs are public, the DJCS posts grant applications on its website. It will also send grant applications to county commissioners, law enforcement agencies (county and local), prosecutors, victim service providers, and a mailing list of organizations, created by the DJCS, who provide services to underserved populations. When the Committee issues RFPs to existing subgrantees or to culturally specific organizations, the DJCS only sends grant applications to those entities.

Once the DJCS receives STOP or Victim Assistance grant proposals, DJCS staff members assess its completeness. DJCS staff members forward completed proposals with comments to the Committee for evaluation of the programmatic merits. The Committee will then make its recommendations for award. Based primarily upon the Committee's recommendations, DJCS staff will send recommendations for award to the Governor for final approval. The Governor reviews the funding recommendations and announces final approval of the projects by distributing official award letters.

The DJCS's STOP grant application states, as to FBO applicants, "[f]aith-based applicants will be considered for funding on the same basis as any other eligible entity and, if funded will be treated on an equal basis with all other subgrantee agencies in the administration of awards. No eligible applicant will be discriminated for or against on the basis of religious affiliation. The Victim Assistance grant application specifically lists "religiously affiliated organizations" as an eligible organization. The OCR finds no

evidence that the DJCS's process awarding either the STOP or Victim Assistance subgrants discriminates against religious organizations in violation of the Equal Treatment Regulations. In FY 2007, the DJCS awarded a Victim Assistance subgrant to a FBO, Kanawha Pastoral Services, for \$12,600. In FY2009, the DJCS awarded one STOP subgrant to the City of Charleston's STOP team² for \$60, 865, of which approximately \$6,000 was provided to the FBO, Kanawha Pastoral Services, to provide victim counseling services.

During the onsite visit, staff with whom the OCR spoke stated that it requires non-profit organization applicants to obtain federal tax-exempt status under 26 U.S.C. § 501(c)(3) (Section 501 (c)(3)) to be eligible to receive funds. DJCS staff informed the OCR that in the past, they have assisted nonprofit organizations who do not have Section 501(c)(3) status in partnering with a nonprofit organization who has Section 501(c)(3) status so as to be eligible for funding.

Recommendation

Unless Section 501(c)(3) status is required under the particular grant program, such as a program funded under the JJDP, the DJCS should be mindful that applicants can also demonstrate nonprofit status by other means. Although the DJCS has allowed nonprofit organizations who do not have Section 501(c)(3) status to partner with organizations who have 501(c)(3) tax-exempt status to qualify for funding, the OCR recommends that the DJCS consider other means for non-JJDP grantees to demonstrate their nonprofit status. According to DOJ regulations, entities may show nonprofit status by any of the following means:

- (1) [p]roof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;
- (2) [a] statement from a State taxing body or the State secretary of state certifying that: (i) [t]he organization is a nonprofit organization operating within the State; and (ii) [n]o part of its net earnings may lawfully benefit any private shareholder or individual;
- (3) [a] certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or
- (4) [a]ny item described in ... this section if that item applies to a State or nation parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

² The City of Charleston's STOP team consists of the Kanawha County Prosecutor's Office, Family Service of Kanawha Valley, West Virginia Department of Education, Legal Aid of West Virginia, Kanawha County Sheriff's Department, and several local law enforcement agencies.

28 C.F.R. § 38.1 (g).

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

In Section I.A.2. above, the DJCS does not have comprehensive methods for monitoring subgrantees compliance with the provisions of the Equal Treatment Regulations.

As a part of the OCR's onsite visit to the DJCS, the OCR visited two DJCS faith-based subgrantees: (1) HOPE CDC and (2) KISRA.

The HOPE CDC used the grant funding for a case manager position for its HOPE Mentoring Initiative. According to the description, the case manager is responsible for performing intake and follow-up activities in connection with the HOPE Mentoring program. The HOPE Mentoring program focuses on mentoring court-involved and at-risk youth as identified by school counselors. The HOPE Mentoring program uses the TALK (Transforming A Little Knowledge Systematically) Mentoring Curriculum, a content-based mentoring and leadership curriculum purportedly used by Boys and Girls Clubs and Big Brother Big Sisters Organizations. The curriculum did not contain religious instruction or proselytization. During the onsite visit, the Executive Director informed the OCR that the HOPE CDC does not inquire into religious affiliation of its employees, beneficiaries, or volunteers in any of its programs. The OCR did not observe the HOPE CDC engaging in forms of inherently religious activities such as worship, religious instruction, or proselytization as prohibited by the Equal Treatment Regulations. *See* 28 C.F.R. 38.1(b)(1).

The KISRA used the grant to fund a portion of salaries of employees at the Harambee Learning Center's afterschool program. The afterschool program provides a drug-free haven that focuses on reducing youth involvement in high-risk activities and encouraging academic achievement for children that attend school in Kanawha County. The afterschool program's staff positions partially funded where the project director, program assistant, and tutors. According to the position descriptions, none of the funded positions included any inherently religious tasks or responsibilities. Upon interview with staff, the OCR did not find that KISRA inquires into the religious affiliation of its employees, program beneficiaries, or volunteers (who were primarily from AmeriCorps). The OCR did not observe any forms of inherently religious activities such as worship, religious instruction, or proselytization within the Harambee Learning Center's afterschool program, as prohibited by the Equal Treatment Regulations. *See id.*

II. Conclusion

We find that the DJCS is not in full compliance with the federal civil rights laws that the OCR enforces. Specifically, we recommend that the DJCS: (1) strengthen its standard assurances by expanding references to applicable federal civil rights laws, (2) revise it

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monitoring methods, (3) establish civil rights training for all of its subgrantees, and (4) develop written complaint policies for responding to employment and service discrimination complaints against subgrantees. On request, the OCR has resources available to provide technical assistance to the DJCS in addressing the concerns raised in this Compliance Review Report. Immediately upon receipt of this letter, we ask that a responsible DJCS official contact Attorney-Advisor [REDACTED] 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 [REDACTED] at [REDACTED]
[REDACTED]

Sincerely,

Michael L. Alston
Director

Enclosures

cc: Jeffrey D. Estep, Chief Deputy Director (w/enclosures)