



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

January 6, 2010

J. Michael Brown, Secretary
Kentucky Justice and Public Safety Cabinet
125 Holmes Street
Frankfort, Kentucky 40601-2108

Re: Compliance Review of the Kentucky Justice and Public Safety Cabinet (09-OCR-0273)

Dear Secretary Brown:

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, including the Kentucky Justice and Public Safety Cabinet (JPSC), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the JPSC's compliance with applicable federal civil rights laws along with the JPSC's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the JPSC's implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations].

On July 29, 2009, the OCR conducted an onsite visit to the JPSC's offices in Frankfort, Kentucky, to interview JPSC administrators and to conduct a training program for JPSC administrators and program staff on the federal civil rights laws that the OCR enforces. The OCR would like to thank JPSC staff, especially Branch Manager Tanya Dickinson, for assisting OCR attorney Shelley Langguth during her onsite visit. On the same day, the OCR made onsite visits to two faith-based subrecipients of the JPSC: A New Beginning for Women Cultivating a Rose, Inc., in Louisville, Kentucky and Prodigal Ministries, Inc., in Crestwood, Kentucky.

Based on the JPSC's responses to our data request and the information that the OCR gathered during our onsite visit, the OCR sent the JPSC a draft Compliance Review Report on November 30, 2009. In response to the draft Compliance Review Report, Ms. Dickinson contacted Ms. Langguth on December 29, 2009 and provided clarification regarding the JPSC's requirement that applicants certify compliance with Section 504 of the Rehabilitation Act of 1973 when they apply for a grant. Based on this clarification, the OCR has removed the advisement contained in footnote 6 of the draft Compliance Review Report.

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In regard to the limited scope of our review, the OCR concludes that the JPSC has taken steps to substantially comply with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about whether the JPSC has adequate complaint procedures in place to respond to discrimination complaints from beneficiaries and employees of subrecipients, and whether it is sufficiently training and educating its subrecipients on applicable federal civil rights laws. The following Compliance Review Report includes recommendations for improving the JPSC's methods for monitoring the civil rights compliance of subrecipients. The OCR will issue a report regarding A New Beginning for Women Cultivating a Rose, Inc., and Prodigal Ministries, Inc., under separate cover at a later date.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report first examines the JPSC'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 JPSC'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 JPSC's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the JPSC 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.

1. Standard Assurances

According to our records, the JPSC currently administers numerous grant awards from the OJP's Bureau of Justice Assistance (BJA), Bureau of Justice Statistics (BJS), National Institute of Justice (NIJ), Office for Victims of Crime (OVC), and the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the DOJ's Office on Violence Against Women (OVW). During the OCR's onsite monitoring visit, the branch manager of the JPSC's Grants Management Branch (GMB) told the OCR that the GMB administers and monitors all of the OJP subawards except the OJJDP subawards, and that OJJDP subawards are administered by the JPSC's Kentucky State Police and Department of Juvenile Justice (DJJ). Specifically, the State

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Police administers subgrants funded by the OJJDP's Enforcing the Underage Drinking Laws Program (EUDP) and the DJJ administers subgrants under the Title II Formula Grant Program (Title II), the Title V Community Prevention Grants Program (Title V), and the Juvenile Accountability Block Grant Program (JBAG).

Before the JPSC releases funds, subrecipients must sign and agree to abide by written subgrant conditions. During the OCR's onsite visit, the GMB branch manager provided the OCR with the current subgrant conditions that are used for the grants administered by the GMB; subsequent to the OCR's onsite visit, the grants supervisor from the DJJ explained that the DJJ uses the same subgrant conditions. Paragraph 2 of these subgrant conditions is entitled "Discrimination Prohibited" and states the following:

The subgrantee agrees to assure that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any activity receiving funds from the Office of Justice Programs on the basis of race, color, religion, national origin, sex, handicap, veteran status, sexual preference, or age. The subgrantee shall also assure the designation of an employee who will have lead responsibility for insuring subgrantee's compliance with civil rights regulations.

A. The applicant assures that it will comply, and all of its subgrantees and contractors will comply, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1978 (Public Law 90-351) 42 U.S.C. § 3701 or Victims of Crime Act (as appropriate), et Seq., Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Nondiscrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G, and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39¹.

B. The applicant assures 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 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 Office of Civil Rights Compliance (OCRC)² of the Office of

¹ Please be advised that 28 CFR pt. 39 applies to the Department of Justice itself and does not apply to recipients of funding from the Department of Justice. The JPSC should omit reference to 28 C.F.R. pt. 39 in this paragraph.

² Please note that our office is called the "Office for Civil Rights" and not the "Office of Civil Rights Compliance."

Justice Programs.

C. The applicant assures that it is in compliance with Title VI of the Civil Rights Act by providing services that are accessible to persons with limited English proficiency (LEP). Recipients will prepare a written policy on language assistance for LEP persons, and have such policy available for review by the Kentucky Justice and Public Safety Cabinet.

In connection with paragraph 2.C, when potential subrecipients apply for DOJ funding on the JPSC's electronic Grant Management System (GMS), including funding administered by the GMB, the State Police, and the DJJ, the applicants must attach their written policy for providing services to LEP persons. The GMS contains an explanation of the requirement for recipients of federal funding to take reasonable steps to ensure that LEP persons have meaningful access to programs and services, and provides a link to www.lep.gov for assistance in developing or revising a LEP plan.

In addition, paragraph 22 of the subgrant conditions used by the GMB and the DJJ contains the following language regarding the prohibition against using federal funds on inherently religious activities:

Applicant understands that federal grant funds, if awarded, may not be used to support "inherently religious" activities, such as religious worship, instruction, or proselytization. Faith-based organizations may use federal grant funds awarded as a result of this application only to support approved, non-religious program activities. Therefore, faith-based organizations that receive direct governmental funds should take steps to separate, in time or location, their inherently religious activities from the government-funded services that they offer. Such organizations should also carefully account for their use of all government money.³

As for OJJDP subgrants administered by the State Police, a grants coordinator from the State Police provided the OCR with the current contract that subrecipients must sign. This contract contains the following paragraphs regarding civil rights requirements:

The JPSC should modify this paragraph accordingly.

³ According to the DOJ's Equal Treatment Regulations, a State Administering Agency shall not use any subgrant agreements or conditions that only require faith-based organizations to provide assurances that they will not use funding for inherently religious activities; any such restrictions shall apply equally to religious and non-religious organizations. See 28 C.F.R. § 38.1(e). Therefore, the JPSC should modify this paragraph so that it applies to all applicants of DOJ funding and not just faith-based organizations.

3. Civil Rights Requirements

A. Recipient is required to comply with all applicable state and Federal nondiscrimination laws and regulations. The statute that governs OJP-funded programs or activities (Section 809(c) Omnibus Crime Control and Safe

Streets Act of 1968, as amended, 42 U.S.C. 3789d) prohibits such discrimination.

No person in any State shall on the ground of race, color, religion, national origin, sex (or disability)⁴ be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title.

B. Recipient must comply with the Federal Civil Rights Act of 1964 as amended, and the Kentucky Civil Rights Act of 1968 as amended, and the Establishment Clause of the United States Constitution. The Recipient shall not on the ground of race, color, religion, sex, age (40-70)⁵ or national origin:

- 1) Deny any individual aid, care, services, or other benefits provided under this program;
- 2) Provide any aid, care, services, or other benefits to an individual which is different, or is provided in a different manner, from that provided to others under the program;
- 3) Subject any individual to segregation or separate treatment in any matter related to receipt of any aid, care, services, or other benefits provided under the program;
- 4) Restrict any individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, care, services, or other benefits provided under the program;
- 5) Treat an individual differently from others in determining whether he or she satisfied any eligibility or other requirement or condition which individuals must meet in order to receive any aid, care, services, or other

⁴ The Omnibus Crime Control and Safe Streets Act does not cover discrimination on the basis of a disability. The JPSC should omit reference to disability when quoting this statute.

⁵ Please note that the Civil Rights Act of 1964 does not cover age discrimination. One of the laws that the OCR enforces, the Age Discrimination Act of 1975, 42 U.S.C. § 6102, prohibits discrimination in the delivery of services based on any age. The JPSC should review the Kentucky Civil Rights Act of 1968 or the federal Age Discrimination in Employment Act to determine whether the reference in this paragraph to the prohibition on age discrimination is correct.

benefits provided under the program; or
6) Deny any individual an opportunity to participate in the program through the provision of services or otherwise afford an opportunity to do so which is different from that afforded others under the program.

4. Section 504 (Rehabilitation Act)

Recipient must comply with the provision of Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified handicapped individuals under any program or activity receiving federal financial assistance. The Recipient shall: (1) conduct an annual self-evaluation for compliance with Section 504; and (2) If the Recipient has fifteen or more employees, it shall appoint an employee to coordinate efforts to comply with Section 504 and adopt procedures that provide for the resolution of complaints relation to Section 504.⁶

In the JPSC's response to the OCR's data request, it provided a copy of the Equal Employment Form that applicants for subgrants administered by the GMB must complete. On this form, an applicant must certify that it has formulated an Equal Employment Opportunity Plan (EEOP) in accordance with 28 C.F.R. § 42.301 et seq. and that it is on file for review, or that it is not required under 28 C.F.R. § 42.301 to file an EEOP. The staff from the DJJ and the State Police with whom the OCR spoke said that their departments used similar Equal Employment Forms for the subgrants that they administer.

2. Onsite Visits and Other Monitoring Methods

In the JPSC's response to the OCR's data request, it said that the GMB periodically performs onsite monitoring visits of subrecipients to evaluate compliance with grant requirements. During the OCR's onsite visit, the GMB branch manager said that the GMB performs onsite monitoring visits of a minimum of 25% of subrecipients each year. The branch manager provided the OCR with the current copy of the GMB's Management Policies and Procedures; according to this document, each subrecipient shall receive an on-site visit approximately no less often than every three years. The GMB branch manager also provided the OCR with a copy of the monitoring checklist that GMB grant managers use during their onsite visits; this checklist contains several questions regarding compliance with federal civil rights requirements. Specifically, the checklists require a grant manager to inquire whether there is evidence of non-discriminatory practices in serving clients; whether the subrecipient is required to complete an EEOP and if so,

⁶ According to the DOJ regulations, recipients who have 50 or more employees and receive \$25,000.00 or more in DOJ funding are subject to these requirements. See 28 C.F.R. § 42.205. The JPSC should revise this sentence accordingly.

whether a copy of the plan is available; whether the subrecipient provides meaningful access to LEP individuals and whether a copy of the subrecipient's LEP plan is available; whether any findings of discrimination have been entered against the subrecipient; and whether there are any pending investigations of allegations of discrimination.

Subsequent to the OCR's onsite visit, the DJJ grants supervisor said that historically the DJJ has conducted onsite visits of each DOJ subrecipient every two to three years, and that the DJJ now conducts onsite visits every year. The DJJ grants supervisor said that currently the DJJ program managers do not use a standard checklist, but that they do inquire about a subrecipient's development of an EEOP. The grants supervisor told the OCR that the DJJ will be developing a standard checklist for all program managers to use.

The grants coordinator for the State Police told the OCR that she tries to conduct onsite visits of subrecipients every six months, and that while she uses a checklist it does not contain any questions on compliance with civil rights requirements.

3. Training and Technical Assistance

The JPSC said in its data response that the GMB has not conducted any specific training programs for subrecipients on civil rights requirements. During the OCR's onsite visit, the GMB branch manager said that every two to three years the GMB will conduct a general training for subrecipients on all of the grant conditions. Subsequent to the OCR's onsite visit, the DJJ grants supervisor and the State Police grants coordinator told the OCR that while they conduct periodic trainings for their subgrantees, these trainings do not cover civil rights requirements.

4. Complaint Procedures

In regard to discrimination complaints from employees of the JPSC, the JPSC is governed by the equal employment opportunity policies and procedures set forth in 101 Ky.Admin.Reg. 1:375 (2009) and Ky. Exec. Order No. 2008-473 (2008), and in the state affirmative action plan at Ky.Rev.Stat. Ann. § 18A.138 (2009). In addition, the DJJ has developed its own policies and procedures regarding complaints from DJJ employees. See, DJJ Policy 103.2, Sexual Harassment; DJJ Policy 106.6, Equal Employment Opportunity.

As for discrimination complaints by clients, beneficiaries, or program participants of JPSC programs and activities, the DJJ has developed procedures to address complaints from youth at DJJ-operated day treatment centers, group homes, and youth development centers. See, DJJ Policy 3.31, Grievance Procedures. Additionally, the State Police has information on its website instructing members of the public of the procedures for filing a complaint against the State Police. The JPSC also has an Office of Investigations that accepts complaints from the public

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regarding JPSC staff, treatment of juveniles, and other matters relating to the operation of the JPSC, with the exception of complaints relating to the State Police.

The JPSC does not have any written procedures in place to address discrimination complaints against DOJ subrecipients by employees or beneficiaries. In the JPSC's response to the OCR's data request, it said that if the GMB received a complaint from an employee or beneficiary of a subrecipient the JPSC's Office of Legal Services would review the complaint and determine if it should be referred to an appropriate state or local agency. During the OCR's onsite visit, the GMB branch manager said that GMB grant managers instruct subrecipients during onsite visits to notify the GMB if they receive a discrimination complaint. Subsequent to the OCR's onsite visit, the DJJ grants supervisor and the State Police grants coordinator told the OCR that they also do not have any written procedures addressing discrimination complaints against subrecipients; the State Police grants coordinator said that she would contact GMB if she ever received a complaint against a subrecipient. None of the JPSC staff with whom the OCR spoke were aware of a discrimination complaint being filed against a subrecipient.

Based on the OCR's research, it appears that the Kentucky Commission on Human Rights has jurisdiction over complaints alleging discrimination in employment and in public accommodation on the basis of race, color, religion, national origin, and disability, and also on the basis of age and sex in employment. Accordingly, it appears that employees of the JPSC and employees of JPSC subrecipients may file discrimination complaints with the Kentucky Commission on Human Rights. It further appears that certain beneficiaries of the JPSC and JPSC subrecipients may be able to file discrimination complaints with the Kentucky Commission on Human Rights as well, depending on whether the program or activity at issue qualifies as a place of public accommodation.

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 JPSC's equitable treatment of faith-based organizations, the Compliance Review 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.

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

As discussed in Section I.A.1 of this Compliance Review Report, the JPSC's GMB, DJJ, and State Police all administer DOJ subawards, and applicants apply for these subawards through the electronic GMS. The GMB branch manager explained to the OCR that the GMB issues a press release to announce DOJ funding opportunities and posts funding solicitations on GMS and on the JPSC's website. The GMB branch manager said that applications are reviewed by GMB staff along with external peer reviewers who are subject matter experts, and that GMB staff then makes funding recommendations to the JPSC's executive staff. According to the DJJ grants supervisor, the DJJ uses a grants subcommittee from the state's Juvenile Justice Advisory Board to review applications and make funding recommendations to the Commissioner of the DJJ. As for subgrants administered by the State Police, the State Police grants coordinator told the OCR that the State Police posts funding solicitations on the State Police's and the JPSC's websites and uses a panel comprised of State Police staff and external reviewers to review applications and make funding recommendations to the Commissioner of the State Police.

In regard to funding administered by the GMB, according to the information contained in the JPSC's response to the OCR's data request and the information that the OCR gathered during its onsite visit, the OCR understands that in Fiscal Year 2006, two faith-based organizations applied for BJA funding under the Justice Assistance Grant Program (JAG) and two faith-based organizations applied for OVC funding under the Victims of Crime Act (VOCA), and that all four faith-based organizations received funding. For Fiscal Year 2007, as of the time of the JPSC's data request five faith-based organizations had applied for funding under the JAG program, and two of these organizations received funding. According to the JPSC's data response, two applicants did not receive funding based on the quality of the application and one applicant did not receive funding because the applicant's statement of problem did not conform to the JAG's purpose areas.

Subsequent to the JPSC's data response, the GMB branch manager provided the OCR with information on the faith-based organizations that received DOJ funding from the GMB in Fiscal Year 2008. According to the GMB branch manager, the following four faith-based organizations applied for and received funding during this time: Catholic Charities of Louisville applied for \$48,948.00 in OVW funding under the Violence Against Women Act (VAWA) to provide immigration legal services, and received \$39,200.00; the Christian Appalachian Project applied for \$80,473.00 in OVC funding under VOCA for its domestic violence victim advocates program, and received \$78,000.00; A New Beginning for Women Cultivating a Rose, Inc., applied for \$54,600.00 in BJA funding under JAG for its residential female reentry program, and received \$40,950.00; and Prodigal Ministries, Inc., applied for \$39,354.00 in BJA funding under JAG for its residential female and male reentry program, and received \$24,220.00.

Subsequent to the OCR's onsite visit, the DJJ grants supervisor told the OCR that for many years the DJJ has been awarding OJJDP funding to the Methodist Home of Kentucky for detention services, and that currently, the Methodist Home of Kentucky receives several Title II subawards for a total of \$225,000.00. The DJJ grants supervisor said that no other faith-based organizations have applied for OJJDP funding administered by the DJJ since Fiscal Year 2006. According to the State Police grants coordinator, no faith-based organizations have applied for OJJDP funding from the State Police since Fiscal Year 2006. The State Police grants coordinator said that she has been conducting outreach to faith-based organizations to notify them of funding opportunities; for example, last year the grants coordinator contacted five large faith-based organizations to notify them of funding solicitations, and this year the grants coordinator is working with the Kentucky Faith-Based Coalition.

As part of the OCR's onsite visit to the JPSC, we conducted onsite visits to two faith-based organizations, A New Beginning for Women Cultivating a Rose, Inc., in Louisville, Kentucky and Prodigal Ministries, Inc., in Crestwood, Kentucky. As explained previously in this Compliance Review Report, the OCR will issue a report on these organizations under separate cover at a later date.

In the JPSC's response to the OCR's data request, the JPSC said that nonprofit organizations applying for DOJ subawards administered by the GMB do not need to have tax exempt status under 26 U.S.C. § 501(c)(3) to be eligible to receive funds. Subsequent to the OCR's onsite visit, the DJJ grants supervisor and the State Police grants coordinator said that applicants for funding under OJJDP subawards are required to have tax exempt status under 26 U.S.C. § 501(c)(3) to receive funding, in accordance with statutory criteria.

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

In the JPSC's response to the OCR's data request, it said that any faith-based organization requesting funding for an inherently religious activity would be asked to revise its application to remove or suitably alter that component. The JPSC further said that staff review all aspects of program service delivery during onsite visits and advise subrecipients of any necessary revisions. As discussed in Section I.A.1 of this Compliance Review Report, the subgrant conditions for funding administered by the GMB and the DJJ discuss the prohibition on using federal funding for inherently religious activities, although this discussion does not explicitly reference the Equal Treatment Regulations at 28 C.F.R. pt. 38.

II. Recommendations

The JPSC has some procedures in place for monitoring the civil rights compliance of its subrecipients, such as referencing many of the laws that the OCR enforces in its subgrant conditions and inquiring about compliance with certain civil rights requirements during the onsite visits that the GMB conducts. To strengthen the JPSC's monitoring efforts, the OCR offers the following six recommendations: (1) develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints from employees and beneficiaries of subrecipients; (2) add a citation referring to DOJ's Equal Treatment Regulations to the subgrant conditions used by the GMB, the DJJ, and the State Police; (3) modify existing subgrant conditions to contain an accurate explanation of and citation to federal civil rights laws; (4) monitor for compliance with additional federal civil rights laws during onsite monitoring visits; (5) provide training to subrecipients on their obligations to comply with federal civil rights laws; and (6) modify the JPSC's current Equal Employment Form to more accurately reflect the EEOP requirements.

A. Develop Comprehensive Complaint Procedures

While the JPSC has written procedures in place for receiving and investigating discrimination complaints from employees and beneficiaries of the JPSC, the JPSC does not have any procedures in place for addressing discrimination complaints from employees or beneficiaries of JPSC subrecipients. Accordingly, the JPSC should adopt a policy for addressing discrimination complaints that includes at a minimum the following elements:

- 1) designating a coordinator who is responsible for overseeing the complaint process;
- 2) notifying employees and subrecipients of prohibited discrimination in funded programs and activities and the JPSC's policy and procedures for handling discrimination complaints;
- 3) establishing written procedures for receiving discrimination complaints from employees and beneficiaries of JPSC subrecipients;
- 4) referring each complaint to the appropriate agency for investigation and resolution, such as the U.S. Equal Employment Opportunity Commission or the Kentucky Commission on Human Rights; or referring the complaint to the OCR, which will review the complaint and work with the JPSC to resolve the complaint;
- 5) notifying the OCR in writing when the JPSC refers a discrimination complaint to another agency or when the JPSC investigates the complaint internally; and

- 6) training JPSC program staff on their responsibility to refer discrimination complaints, or potential discrimination issues, to the JPSC'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 JPSC may find helpful as it develops procedures for addressing discrimination complaints from employees and beneficiaries of subrecipients.

B. Add a Citation Referring to the Faith-Based Regulations to the JPSC's Subgrant Conditions

The JPSC should modify the subgrant conditions for all of the DOJ subawards that the JPSC administers to include a reference to the DOJ's Equal Treatment Regulations, 28 C.F.R. pt. 38. The JPSC may also want to include a reference to the Equal Treatment Regulations in its funding solicitations for DOJ grant programs for which faith-based organizations are eligible to participate. Subrecipients that receive funding from DOJ components need to be aware of the obligation to comply with these regulations.

C. Modify Existing Subgrant Conditions to Accurately Discuss the Federal Civil Rights Laws that the OCR Enforces

As discussed on pages 3-6 of this Compliance Review Report, the subgrant conditions used by the GMB, the DJJ, and the State Police all contain some inaccurate discussion of or citation to the federal civil rights laws that the OCR enforces. The JPSC should make the changes to these documents that the OCR recommends in footnotes 1-6. For your reference, the OCR is enclosing a copy of the Standard Assurances developed by the OJP; paragraph 6 of this document lists and contains a legal citation to most of the laws that the OCR enforces. At a minimum, the JPSC should ensure that the subgrant conditions for all of the DOJ subgrants that the JPSC administers contain this information. The JPSC may also wish to add a sentence 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.

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

The JPSC is taking steps to ensure that JPSC subrecipients are complying with grant requirements by conducting onsite monitoring visits and by asking certain subrecipients questions relating to compliance with several civil rights requirements. However, the JPSC is not monitoring all subrecipients for compliance with civil rights requirements during onsite visits

and only addresses a few requirements. For instance, the JPSC does not currently ask any questions regarding compliance with the requirements contained in 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. The OCR has developed the attached Federal Civil Rights Compliance Checklist that contains relevant questions regarding civil rights compliance; the JPSC's GMB, DJJ, and State Police should utilize this checklist during onsite monitoring visits or incorporate these questions into any existing checklists.

E. Provide Training to Subrecipients on Their Obligations to Comply with Federal Civil Rights Laws

Currently, the JPSC does not provide any specific training to DOJ subrecipients on their obligations to comply with federal civil rights laws. To ensure that subrecipients are fully 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 submit findings of discrimination to the OCR, the JPSC should provide periodic training programs for its subrecipients specifically on federal civil rights laws. The JPSC should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the JPSC provides the training in person, during a teleconference, or through other means. The OCR is available to provide the JPSC with technical assistance in developing civil rights training programs.

F. Modify the JPSC's Equal Employment Form

The JPSC's Equal Employment Form that the JPSC currently requires subrecipients to complete does not fully explain what types of recipients are required to complete and submit to the OCR an EEOP, what types of recipients are partially exempt from the EEOP requirements and are required to complete and have on file an EEOP, or what types of recipients are completely exempt from the EEOP requirements. Please note that recipients that are a state or local government organization or a for-profit organization, have 50 or more employees, and receive a DOJ grant award of \$500,000.00 or more are required to formulate and submit to the OCR an EEOP, and all other recipients must provide the OCR with some type of form certifying that they are partially or completely exempt from the EEOP requirements. For your information, the OCR is enclosing a copy of the OJP's EEOP Certification Form that discusses the EEOP requirements and which grantees are required to complete if they are claiming a partial or complete exemption from the requirements. The JPSC should modify its existing Equal Employment Form to include this information or should utilize the OJP's form, and should explicitly require subrecipients to submit the form to the OCR if they are not required to submit an EEOP to the OCR.

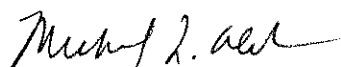
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Conclusion

Except for the concerns we have raised in Section II of this Compliance Review Report, we find that the JPSC has taken steps to substantially comply with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the JPSC in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible JPSC official contact Attorney Advisor Shelley Langguth 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. Langguth at [REDACTED]

Sincerely,


Michael L. Alston
Director

Enclosures

cc: Tanya Dickinson
Branch Manger, Grants Management Branch

Mike Riley
Justice Program Supervisor, Department of Juvenile Justice

Sherry Bray
Public Information Officer, Kentucky State Police

Subject: Procedures for Responding to Discrimination Complaints from Clients, Customers, Program Participants, or Consumers of the [State Administering Agency] and the [State Administering Agency's] Subrecipients

Policy Number:

Effective Date:

I. Purpose

[The State Administering Agency (SAA) should explain the purpose of this document, i.e., to establish written procedures for SAA employees to follow when they receive a complaint alleging discrimination from clients, customers, program participants, or consumers of the SAA or of a SAA subrecipient implementing funding from the U.S. Department of Justice (DOJ).]

II. Policy

[The SAA should explain its policy regarding discrimination against clients, customers, program participants, or consumers of the SAA or the SAA's subrecipients, such as a statement that all individuals have the right to participate in programs and activities operated by the SAA and SAA subrecipients regardless of race, color, national origin, sex, religion, disability, and age. The SAA may wish to state that it will ensure that the SAA and its subrecipients are in compliance with the following statutes and regulations:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin in the delivery of services (42 U.S.C. § 2000d), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart C;
- The Omnibus Crime Control and Safe Streets Act of 1968, which prohibits discrimination on the basis of race, color, national origin, religion, or sex in the delivery of services and employment practices (42 U.S.C. § 3789d(c)(1)), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart D;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (29 U.S.C. § 794), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart G;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (42 U.S.C. § 12132), and the DOJ implementing regulations at 28 C.F.R. Part 35;

- Title IX of the Education Amendments of 1972, which prohibit discrimination on the basis of sex in educational programs (20 U.S.C. § 1681), and the DOJ implementing regulations at 28 C.F.R. Part 54; and
- The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services (42 U.S.C. § 6102), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart I.
- The DOJ regulations on the Equal Treatment for Faith-Based Organizations, which prohibit discrimination on the basis of religion in the delivery of services and prohibit organizations from using DOJ funding on inherently religious activities (28 C.F.R. Part 38).

The SAA may also wish to include a statement that these laws prohibit agencies from retaliating against an individual for taking action or participating in action to secure rights protected by these laws.]

III. Definitions

[The SAA may wish to include definitions of relevant terms, such as “discrimination” and “complaint coordinator.”]

IV. Complaint Procedures

[The SAA should clearly explain its procedures for accepting and responding to discrimination complaints from clients, customers, program participants, or consumers of the SAA and SAA subrecipients. These procedures should include, at a minimum: 1) a designation of the SAA employee who is responsible for coordinating the series of actions described in these procedures; 2) an explanation of how a client, customer, program participant, or consumer may file a complaint of discrimination (i.e. on a specific complaint form, in a letter, in an email, in person, or over the phone); 3) an explanation of how a SAA employee receiving a complaint of discrimination should forward the complaint to the employee who is responsible for coordinating the series of actions described in these procedures; 4) an explanation of whether the SAA will provide the client, customer, program participant, or consumer with any written acknowledgement of the complaint, and how the SAA will correspond with the complainant throughout the investigation; and 5) an explanation of how the SAA will investigate and resolve the complaint, such as whether the SAA will conduct an internal investigation of the complaint, or whether it will refer the complaint to an appropriate external agency for investigation, such as a local or state human rights commission, or the Office for Civil Rights (OCR), Office of Justice Programs, DOJ.

If the SAA’s procedures involve referring the complaint to another agency or agencies for investigation and resolution, the SAA should clearly explain the necessary steps for making this referral. If the SAA’s procedures involve investigating the complaint internally or referring the complaint to an external agency other than the OCR, such as a

local or state human rights commission, the SAA should list the procedures for notifying the OCR in writing of the referral and for notifying the beneficiary that he or she may also file a complaint with the OCR. If the SAA chooses to investigate these complaints internally, the SAA should explain what office or division of the SAA will have responsibility for investigating the complaint and how the SAA will conduct the investigation.

In this section, the SAA should also explain how it will notify clients, customers, program participants, or consumers of the SAA and SAA subrecipients of prohibited discrimination, along with the procedures for filing a discrimination complaint with the SAA and the OCR. Notification may include placing posters in SAA facilities, including reference in program materials, or providing clients, customers, program participants, or consumers with a copy of these complaint procedures. The SAA should also explain how it will ensure that subrecipients have procedures in place for responding to discrimination complaints that clients, customers, program participants, or consumers of a subrecipient file directly with the subrecipient. At a minimum, these procedures should include forwarding the complaint to the SAA, the OCR, or another appropriate external agency, such as a local or state human rights commission; notifying the SAA of any discrimination complaints that the subrecipient does not refer to the SAA; and notifying the complainant that he or she may file a complaint of discrimination directly with the SAA or with the OCR.]

V. Training

[The SAA should describe its procedures for providing periodic training for agency employees on these complaint procedures, including an employee's responsibility to refer discrimination complaints from clients, customers, program participants, or consumers to the employee responsible for coordinating the series of actions described in these procedures. The SAA shall also describe in this section how it will disseminate these procedures to agency employees, such as by posting the procedures on the agency intranet website, providing a copy of the procedures to employees during the training sessions, distributing the procedures to all new employees during orientation, etc.]

Subject: Procedures for Responding to Discrimination Complaints from Employees of the [State Administering Agency's] Subrecipients under U.S. Department of Justice Grant Programs

Policy Number:

Effective Date:

I. Purpose

[Note: Most often, a State Administering Agency (SAA) will already have procedures in place to address discrimination complaints from its own employees and applicants. Therefore, these template complaint procedures are limited to discrimination complaints from employees of the SAA's subrecipients. If the SAA does not already have procedures in place for addressing discrimination complaints from its own employees, it should ensure that these procedures cover complaints from SAA employees as well.]

In this section, the SAA should explain the purpose of this document, such as to establish written procedures for SAA employees to follow when they receive a complaint alleging employment discrimination from an employee of a SAA subrecipient implementing funding from the U.S. Department of Justice (DOJ).]

II. Policy

[The SAA should explain its policy regarding employment discrimination by subrecipients, such as a statement that all employees and applicants of the SAA's subrecipients shall be treated equally regardless of race, color, national origin, sex, religion, and disability. The SAA may wish to state that it will ensure that subrecipients comply with all applicable federal laws regarding employment discrimination.]

III. Definitions

[The SAA may wish to include definitions of relevant terms, such as "discrimination," "complaint coordinator," and "retaliation."]

IV. Complaint Procedures

[The SAA should explain its procedures for responding to employment discrimination complaints against SAA subrecipients. These procedures should include, at a minimum: 1) a designation of the SAA employee who is responsible for coordinating the series of actions described in these procedures; 2) an explanation of how a SAA employee receiving a discrimination complaint from an employee or applicant of a SAA subrecipient should forward the complaint to the employee responsible for coordinating the series of actions described in these procedures; 3) an explanation that the employee responsible for coordinating the series of actions described in these procedures should

refer employment discrimination complaints against SAA subrecipients to the U.S. Equal Employment Opportunity Commission (EEOC) or the appropriate state or local fair employment practices agency or human rights commission; and 4) a requirement that the employee responsible for coordinating the series of actions described in these procedures notify the Office for Civil Rights (OCR), Office of Justice Programs, DOJ, in writing when the employee refers a complaint to the EEOC or a state or local fair employment practices agency or human rights commission. Other options for responding to employment discrimination complaints against SAA subrecipients include the SAA investigating these complaints and notifying the OCR of the investigation and outcome, or referring the complaints to the OCR.

In this section, the SAA should also explain how it will ensure that subrecipients have procedures in place for responding to discrimination complaints that employees or applicants file directly with the subrecipient. At a minimum, these procedures should include forwarding the complaint to the EEOC or a state or local fair employment practices agency or human rights commission and notifying the SAA of this referral.]

V. Training

[The SAA should describe its procedures for providing periodic training for agency employees on these complaint procedures, including an employee's responsibility to refer discrimination complaints from employees or applicants of SAA subrecipients to the employee responsible for coordinating the series of actions described in these procedures. The SAA shall also describe in this section how it will disseminate these procedures to agency employees, such as by posting the procedures on the agency intranet website, providing a copy of the procedures to employees during the training sessions, distributing the procedures to all new employees during orientation, etc.]



STANDARD ASSURANCES

The Applicant hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including OMB Circulars A-21, A-87, A-102, A-110, A-122, A-133; Ex. Order 12372 (intergovernmental review of federal programs); and 28 C.F.R. pts. 66 or 70 (administrative requirements for grants and cooperative agreements). The applicant also specifically assures and certifies that:

1. It has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.
2. It will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
3. It will give the awarding agency or the General Accounting Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance.
4. It will comply with all lawful requirements imposed by the awarding agency, specifically including any applicable regulations, such as 28 C.F.R. pts. 18, 22, 23, 30, 35, 38, 42, 61, and 63, and the award term in 2 C.F.R. § 175.15(b).
5. It will assist the awarding agency (if necessary) in assuring compliance with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Ex. Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).
6. It will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); The Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); and the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); *see* Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).
7. If a governmental entity—
 - a) it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. § 4601 et seq.), which govern the treatment of persons displaced as a result of federal and federally-assisted programs; and
 - b) it will comply with requirements of 5 U.S.C. §§ 1501-08 and §§ 7324-28, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

Signature Date

Date

Federal Civil Rights Compliance Checklist

1. If the subrecipient is required to prepare an Equal Employment Opportunity Plan (EEOP) in accordance with 28 C.F.R. §§ 42.301-.308, does the subrecipient have an EEOP on file for review?

Yes No

If yes, on what date did the subrecipient prepare the EEOP?

2. Has the subrecipient submitted an EEOP Short Form to the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), if required by 28 C.F.R. §§ 42.301-.308? If the subrecipient is not required to submit an EEOP Short Form to the OCR, has it submitted a certification form to the OCR claiming a partial or complete exemption from the EEOP requirements?

Yes – submitted an EEOP Short Form Yes – submitted a certification No

If the subrecipient prepared an EEOP Short Form, on what date did the subrecipient prepare it?

3. How does the subrecipient notify program participants and beneficiaries that it does not discriminate on the basis of race, color, national origin, religion, sex, disability, and age in the delivery of services (e.g. posters, inclusion in brochures or other program materials, etc.)?

Comments:

4. How does the subrecipient notify employees that it does not discriminate on the basis of race, color, national origin, religion, sex, and disability in employment practices (e.g. posters, dissemination of relevant orders or policies, inclusion in recruitment materials, etc.)?

Comments:

5. Does the subrecipient have written policies or procedures in place for notifying program beneficiaries how to file complaints alleging discrimination by the subrecipient with the [State Administering Agency] or the OCR?

Yes No

If yes, an explanation of these policies and procedures:

6. If the subrecipient has 50 or more employees and receives DOJ funding of \$25,000 or more, has the subrecipient taken the following actions:

- a. Adopted grievance procedures that incorporate due process standards and provide for the prompt and equitable resolution of complaints alleging a violation of the DOJ regulations implementing Section 504 of the Rehabilitation Act of 1973, found at 28 C.F.R. Part 42, Subpart G, which prohibit discrimination on the basis of a disability in employment practices and the delivery of services.

Yes No

- b. Designated a person to coordinate compliance with the prohibitions against disability discrimination contained in 28 C.F.R. Part 42, Subpart G.

Yes No

- c. Notified participants, beneficiaries, employees, applicants, and others that the subrecipient does not discriminate on the basis of disability.

Yes No

Comments:

7. If the subrecipient operates an education program or activity, has the subrecipient taken the following actions:

- a. Adopted grievance procedures that provide for the prompt and equitable resolution of complaints alleging a violation of the DOJ regulations implementing Title IX of the Education Amendments of 1972, found at 28 C.F.R. Part 54, which prohibit discrimination on the basis of sex.

Yes No

b. Designated a person to coordinate compliance with the prohibitions against sex discrimination contained in 28 C.F.R. Part 54.

Yes No

c. Notified applicants for admission and employment, employees, students, parents, and others that the subrecipient does not discriminate on the basis of sex in its educational programs or activities.

Yes No

Comments:

8. Has the subrecipient complied with the requirement to submit to the OCR any findings of discrimination against the subrecipient issued by a federal or state court or federal or state administrative agency on the grounds of race, color, religion, national origin, or sex?

Yes No

Comments:

9. What steps has the subrecipient taken to provide meaningful access to its programs and activities to persons who have limited English proficiency (LEP)?

Comments, including an indication of whether the subrecipient has developed a written policy on providing language access services to LEP persons:

10. Does the subrecipient conduct any training for its employees on the requirements under federal civil rights laws?

Yes No

Comments:

11. If the subrecipient conducts religious activities as part of its programs or services, does the subrecipient do the following:

a. Provide services to everyone regardless of religion or religious belief.

Yes No

b. Ensure that it does not use federal funds to conduct inherently religious activities, such as prayer, religious instruction, or proselytization, and that such activities are kept separate in time or place from federally-funded activities.

Yes No

c. Ensure that participation in religious activities is voluntary for beneficiaries of federally-funded programs.

Yes No

Comments:

CERTIFICATION FORM

Recipient Name and Address: _____

Grant Title: _____ Grant Number: _____ Award Amount: _____

Contact Person Name and Title: _____ Phone Number: () _____

Federal regulations require recipients of financial assistance from the Office of Justice Programs (OJP), its component agencies, and the Office of Community Oriented Policing Services (COPS) to prepare, maintain on file, submit to OJP for review, and implement an Equal Employment Opportunity Plan (EEOP) in accordance with 28 C.F.R §§ 42.301-.308. The regulations exempt some recipients from all of the EEOP requirements. Other recipients, according to the regulations, must prepare, maintain on file and implement an EEOP, but they do not need to submit the EEOP to OJP for review. Recipients that claim a complete exemption from the EEOP requirement must complete **Section A** below. Recipients that claim the limited exemption from the submission requirement, must complete **Section B** below. **A recipient should complete either Section A or Section B, not both.** If a recipient receives multiple OJP or COPS grants, please complete a form for each grant, ensuring that any EEOP recipient certifies as completed and on file (if applicable) has been prepared within two years of the latest grant. Please send the completed form(s) to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, D.C. 20531. For assistance in completing this form, please call (202)307-0690 or TTY (202) 307-2027.

Section A- Declaration Claiming Complete Exemption from the EEOP Requirement. *Please check all the boxes that apply.*

- | | |
|--|---|
| <input type="checkbox"/> Recipient has less than 50 employees, | <input type="checkbox"/> Recipient is an Indian tribe, |
| <input type="checkbox"/> Recipient is a non-profit organization, | <input type="checkbox"/> Recipient is an educational institution, or |
| <input type="checkbox"/> Recipient is a medical institution, | <input type="checkbox"/> Recipient is receiving an award less than \$25,000 |

I, _____ [responsible official], certify that _____ [recipient] is not required to prepare an EEOP for the reason(s) checked above, pursuant to 28 C.F.R §42.302. I further certify that _____ [recipient] will comply with applicable Federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

Print or type Name and Title _____ Signature _____ Date _____

Section B- Declaration Claiming Exemption from the EEOP Submission Requirement and Certifying That an EEOP Is on File for Review.

If a recipient agency has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, then the recipient agency does not have to submit an EEOP to OJP for review as long as it certifies the following (42 C.F.R. § 42.305):

I, _____ [responsible official], certify that the _____ [recipient], which has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, has formulated an EEOP in accordance with 28 CFR §42.301, *et seq.*, subpart E. I further certify that the EEOP has been formulated and signed into effect within the past two years by the proper authority and that it is available for review. The EEOP is on file in the office of: _____ [organization], at _____ [address], for review by the public and employees or for review or audit by officials of the relevant state planning agency or the Office for Civil Rights, Office of Justice Programs, U. S. Department of Justice, as required by relevant laws and regulations.

Print or type Name and Title _____ Signature _____ Date _____