



U.S. Department of Justice

Office of Justice Programs

*Office for Civil Rights*

---

Washington, D.C. 20531

November 23, 2009

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Ms. Michelle Vetter  
Grants/Contracts Officer  
North Dakota Office of Attorney General  
Bureau of Criminal Investigation  
Bismarck, ND 58502

Re: Compliance Review of North Dakota Office of the Attorney General  
(09-OCR-0064)

Dear Ms. Vetter:

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 North Dakota Office of the Attorney General (OAG or Office), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the OAG's compliance with applicable federal civil rights laws along with the Office's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the OAG'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 28, 2009, the OCR conducted an onsite visit to the OAG's offices in Bismarck, North Dakota to interview Office representatives. On July 29, 2009, the OCR also provided a training program for OAG management and program staff about the federal civil rights laws that the OCR enforces. The OCR would like to thank you for assisting OCR attorney Christopher Zubowicz during his onsite visit.

In regard to the limited scope of this compliance review, the OCR concludes that the OAG appears to be taking measures to comply with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about the adequacy of the Office's (1) guidance to subrecipients about their legal obligations regarding applicable federal civil rights laws, (2) onsite monitoring of subrecipients, (3) training for subrecipients, and (4) complaint procedures for responding to certain discrimination allegations. The following Compliance Review Report includes recommendations for improving the OAG's methods for monitoring the civil rights compliance of subrecipients.

## **Compliance Review Report: Overview and Recommendations**

### I. Overview

This Compliance Review Report first examines the OAG's procedures for monitoring whether subrecipients are meeting their obligations to comply with the federal civil rights laws that are a condition for receiving federal financial assistance. The Report then focuses on the Office's implementation of the DOJ's Equal Treatment Regulations.

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

Recipients of federal financial assistance from the OJP are responsible for certifying that contractors and subrecipients under DOJ grant programs comply with applicable federal civil rights laws. In reviewing the OAG's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the Office used the following four tools: (1) standard assurances and special conditions; (2) onsite visits and other monitoring methods; (3) training programs and technical assistance; and (4) procedures for receiving, investigating, and resolving complaints alleging employment and services discrimination.

##### 1. Standard Assurances and Special Conditions

The OAG's Bureau of Criminal Investigation (BCI) subawards DOJ funds to subrecipients through the Edward Byrne Memorial Justice Assistance Grant (JAG) program, the Residential Substance Abuse Treatment for State Prisoners (RSAT) program, and the Project Safe Neighborhoods (PSN) program. Before releasing these program funds, the OAG requires subrecipients to sign and return certain documents that highlight their obligations under federal civil rights laws. In an effort to address applicable civil rights requirements, the Office uses one set of standard assurances and special conditions for RSAT subrecipients, but relies on separate special conditions documents for JAG and PSN subrecipients.

The Office requires RSAT subrecipients to sign and return a standard assurances document that contains the following language regarding civil rights laws:

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

Michelle Vetter, Grants/Contracts Officer  
North Dakota Office of Attorney General  
November 23, 2009  
Page 3 of 11

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).

(Standard Assurances RSAT Program, OAG, at ¶ 6.) In the special conditions document, the OAG further requires “[t]he [RSAT] subgrantee [to] acknowledge[] that failure to submit an acceptable Equal Employment Opportunity Plan (if grantee is required to submit one pursuant to 28 C.F.R. 42.302), that is approved by the Office for Civil Rights, is a violation of its Certified Assurances and may result in the suspension of the draw down of funds.” (Special Conditions RSAT Program, at ¶ 2.)

The OAG requires all successful JAG and PSN applicants to sign and return program-specific certified conditions documents, both of which contain the following language regarding civil rights laws:

#### CIVIL RIGHTS

The subgrantee and implementing agency agree that it will comply, and all its associates and contractors will comply, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975[;] Title II Subtitle A, of the Americans with Disabilities Act, 28 C.F.R. Part 42, Subpart I; the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR Part 35.

The subgrantee and implementing agency agree that in the event a federal or state court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights of the Office of Justice Programs, U.S. Department of Justice.

#### EQUAL EMPLOYMENT OPPORTUNITY

The applicant assured that, if required to formulate an Equal Employment Opportunity Program (EEO) in accordance with 28 CFR 42.301 et[.] seq., it will submit a certification to the North Dakota Bureau of Criminal Investigation that it has a current EEO on file, which meets the requirements therein.

The applicant assures that it will provide to the North Dakota Bureau of Criminal Investigation an EEOP, if required to maintain one, where the application is for \$500,000 or more.

\* \* \*

#### AMERICANS WITH DISABILITIES ACT (ADA)

The applicant assures that, in connection with the furnishing of services under this contract, it will comply and any subcontractors will comply with all applicable requirements and provisions of the Americans with Disabilities ACT (ADA).

(Certified Conditions JAG Program, OAG, at 11-12; Certified Conditions PSN Initiative, OAG, at 9-10.)

In several instances, the OAG's standard assurances and special conditions documents do not consistently address the civil rights requirements that apply to all subrecipients of federal financial assistance. First, none of the documents notifies subrecipients that they must submit to the OCR either an EEOP or information indicating that they are eligible for a full or partial exemption from the EEOP requirement. Further, the RSAT standard assurances document has several additional deficiencies. Specifically, it does not:

- comprehensively address applicable Equal Employment Opportunity Plan (EEOP) requirements governing subrecipients by, for instance, requiring the subrecipient to submit a copy of an EEOP or an EEOP certification to the OAG so that the Office can monitor its subrecipients' compliance with the DOJ's EEOP regulations at 28 C.F.R. § 42.301-308; or
- require subrecipients to forward to the OAG or the OCR any finding of discrimination against the subrecipient by a federal or state court or administrative agency on the grounds of race, color, religion, national origin, or sex.

Finally, the JAG and PSN certified conditions documents do not reference the DOJ's Equal Treatment Regulations.

The civil rights requirements that the OCR enforces apply to all subrecipients of federal financial assistance. As a result, it is important that subrecipients uniformly are informed about and agree to comply with applicable civil rights obligations.

#### 2. Onsite Visits and Other Monitoring Methods

The BCI's grants/contracts officer primarily monitors DOJ subawards through onsite visits and

desk reviews. In calendar year 2008, the BCI conducted twelve onsite visits and four desk reviews of JAG, RSAT, and PSN subrecipients; to date, in calendar year 2009, the BCI conducted or scheduled three onsite visits and eleven desk reviews of similar subrecipients. For calendar year 2010, the BCI has scheduled one onsite visit and thirteen desk reviews for these programs. During onsite visits and desk reviews, the grants/contracts officer uses a compliance review checklist, which includes information about whether a subrecipient has a copy of its certified conditions; whether it is in compliance with those conditions; and whether, if applicable, it maintains an Equal Employment Opportunity Plan.

### 3. Training and Technical Assistance

In its response to the OCR's data request, the OAG noted that, because of limited available resources, it does not conduct training programs for subrecipients regarding their duties to comply with applicable federal civil rights laws. Instead, BCI expects its grants/contracts officer to discuss applicable civil rights requirements with subrecipients during onsite visits. The grants/contracts officer also provides telephonic technical assistance to subrecipients and gives additional guidance about grant requirements to new subgrantees.

### 4. Complaint Procedures

In reviewing complaint procedures, the OCR evaluated the processes in place for individuals to pursue complaints of employment and services discrimination against the OAG and its subrecipients. The OAG has an equal employment opportunity policy that specifically prohibits discrimination on the basis of race, color, sex, age, sexual orientation, and national origin, although it does not include other protected classes, such as disability or religion. The OAG also has an internal discrimination grievance procedure that is available to its employees. If an employee wishes to pursue an employment-related grievance involving harassment, discrimination, or a needed accommodation, he or she should follow the established grievance process and, in addition, report his or her concerns directly to the OAG human resources officer or chief deputy. *See also* N.D. Admin. Code 4-07-20.2-01 to -06 (2008). In addition, the State of North Dakota, through the North Dakota Division of Labor (DOL), Human Rights Division, has procedures in place to respond to complaints of discrimination from OAG and subrecipient employees. The DOL is responsible for enforcing the provisions of North Dakota law that prohibit discrimination in employment on the basis of sex, race, color, national origin, religion, age, disability, marital status, an employee's receipt of public assistance, or an employee's participation in certain lawful, off-duty activity. N.D. Cent. Code §§ 14-02.4-01, -03 (2009). An OAG or subrecipient employee also can file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC).

The OAG does not have a written policy or procedure in place that addresses receiving, investigating, and resolving services discrimination complaints from its beneficiaries. As an informal practice, individual divisions within the OAG encourage an aggrieved individual to

Michelle Vetter, Grants/Contracts Officer  
North Dakota Office of Attorney General  
November 23, 2009  
Page 6 of 11

write a complaint to the Attorney General. In some cases, an OAG or beneficiary subrecipient can file a services discrimination complaint with the DOL, which prohibits discrimination in providing public accommodations or public services on the basis of sex, race, color, national origin, religion, age, disability, marital status, or an individual's receipt of public assistance. *Id.* §§ 14-02.4-14, -15.

The OAG also does not require subrecipients to have a policy or procedure that addresses receiving, investigating, and resolving employment or services discrimination complaints they receive. Instead, the BCI merely presumes that subrecipients have protocols in place to respond to and resolve employment and services discrimination complaints, and expects the grants/contracts officer to ask about any such complaints during a site visit. The OAG has no mechanism in place to receive timely notice of each employment or services discrimination complaint that may be filed against a subrecipient.

#### B. Monitoring Compliance with Faith-Based Regulations

The purpose of the Equal Treatment Regulations is to ensure that “[r]eligious organizations are eligible, on the same basis as any other organization, to participate in any [Justice] Department program for which they are otherwise eligible.” 28 C.F.R. § 38.1(a). 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.*

As mentioned above, the OAG subawards JAG, RSAT, and PSN funds. The Office does not require nonprofit applicants to obtain federal tax exempt status in order to participate in any of these programs.

##### 1. JAG Program

The OAG administers the JAG program, which provides funding to states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system. The BCI posts applications for available JAG funds on its Web site and sends a notification regarding the availability of funds to various stakeholders, including law enforcement officials and current subrecipients. Once the BCI receives applications, it forwards them to the Drug and Violent Crime Policy Board (Board), which is comprised of twelve members representing the law enforcement, state and federal prosecutor, state and county government, and victim's services communities. The Board is led by a chairman and consists of three subcommittees (law enforcement subcommittee, criminal justice subcommittee, and community services subcommittee). The subcommittees separately review grant applications and hold hearings for any organizations that want to provide additional information about their proposals. After the subcommittees complete their review of the applications, they make funding recommendations to the full Board, which makes recommendations to the Attorney General, who in turn confers with the Governor about final funding decisions. Throughout the

Michelle Vetter, Grants/Contracts Officer  
North Dakota Office of Attorney General  
November 23, 2009  
Page 7 of 11

Board's application review process, the BCI acts solely in an advisory capacity. No faith-based organizations receive JAG funds; however, the BCI recently encouraged the Quaker Society to apply for funds and facilitated its grant application collaboration with the University of North Dakota's Family Medical Center.

## 2. RSAT Program

The OAG also administers the RSAT program, which provides assistance to state and local governments to develop and implement substance abuse treatment programs in state and local correctional detention facilities and to create and maintain community-based aftercare services for offenders. The Department cannot distribute RSAT funds directly to nonprofit organizations. *See Residential Substance Abuse Treatment (RSAT) for State Prisoners Program FY 2008 Formula Grant Announcement, Bureau of Justice Assistance, at <http://www.ojp.usdoj.gov/BJA/grant/09RSATsol.pdf> (last visited Oct. 1, 2009) at 1* ("The state office may award subgrants to state agencies, units of local government, and Native American tribes."). However, nonprofit groups are eligible to receive RSAT funds by partnering with, for instance, units of local government to implement specific programs. At this point, no faith-based organizations receive RSAT funds through the OAG subaward process.

## 3. PSN Program

The OAG also subawards DOJ funds through the PSN program, which is a nationwide network designed to create safer neighborhoods by reducing gun violence and gun crime, and sustaining that reduction. According to the PSN solicitation, faith-based groups should be encouraged to apply for assistance awards to fund eligible grant activities. *See Project Safe Neighborhoods (PSN) FY 2009 Grant Announcement, Bureau of Justice Assistance, at <http://www.ojp.usdoj.gov/BJA/grant/09PSNsol.pdf> (last visited Oct. 1, 2009) at 1.* A committee formed by the U.S. Attorney's Office for the District of North Dakota selects individual subrecipients, which are then contacted by the OAG and monitored by the BCI grants/contracts officer. Lutheran Social Services recently received PSN funds for separate projects in Grand Forks, North Dakota; and Fargo, North Dakota.

## II. Recommendations

The OAG already has in place a number of procedures for monitoring the civil rights compliance of its subrecipients. To strengthen the Office's monitoring efforts and its inclusion of faith-based organizations in the grant funding process, the OCR offers the following four recommendations: (1) modify the civil rights/nondiscrimination provisions in its standard assurances and special conditions documents, (2) conduct onsite monitoring of all subrecipients and refine its compliance checklist, (3) provide training to subrecipients regarding their obligations to comply with federal civil rights laws, and (4) develop comprehensive complaint procedures for addressing discrimination complaints.

A. Modify the Civil Rights/Nondiscrimination Provisions in Standard Assurances and Special Conditions

The OAG should ensure that all DOJ subrecipients agree to grant agreements that accurately reflect their federal civil rights obligations. To that end, the Office should revise its standard assurances and special conditions documents to incorporate the following language or substantially similar language, which would apply to all subrecipients of DOJ funding, regardless of the program or the amount of federal financial assistance at issue:

Recipient will comply (and will require any subgrantees or contractors to comply) with any applicable federal nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34); the Education Amendments of 1972 (20 U.S.C. §§ 1681, 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Ex. Order 13279 (equal protection of the laws for faith-based and community 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 recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and the Office of the Attorney General (OAG).

Recipient will provide an Equal Employment Opportunity Plan (EEO Plan) to the Office for Civil Rights, Office of Justice Programs and the OAG, if required to submit one; otherwise, it will provide a certification to the Office for Civil Rights, Office of Justice Programs and the OAG that it has a current EEO Plan on file, if required to maintain one. For grantee agencies receiving less than \$25,000; or grantee agencies with less than 50 employees,



Michelle Vetter, Grants/Contracts Officer  
North Dakota Office of Attorney General  
November 23, 2009  
Page 9 of 11

regardless of the amount of the award, no EEOP is required.  
Information about civil rights obligations of grantees can be found  
at <http://www.ojp.usdoj.gov/ocr/>.

The OAG also should consider requiring subrecipients to agree to the following language or substantially similar language regarding language assistance services:

As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, recipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Recipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing your budgets and in conducting your programs and activities. Additional assistance and information regarding your LEP obligations can be found at <http://www.lep.gov>.

Finally, the OAG may 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.

B. Conduct Onsite Monitoring of All Subrecipients and Refine Its Compliance Checklist

As part of its responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the OAG should ensure that it conducts periodic onsite monitoring of DOJ subrecipients. The OCR commends the OAG for its efforts to monitor subrecipients through its use of a compliance checklist. In an effort to improve upon this monitoring tool, the Office should refine it to ensure that it evaluates all of the various civil rights requirements that apply to 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 OAG or the OCR; whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act; whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act; and whether the subrecipient is taking reasonable steps to provide meaningful access to programs and activities for LEP persons). Additionally, the checklist should include specific questions that evaluate whether the subrecipient is complying with the DOJ's Equal Treatment Regulations, including the prohibitions against using federal funds to engage in inherently religious activities and

discriminating against program beneficiaries on the basis of religion. In an effort to assist the OAG in refining its checklist, the OCR has prepared a sample Federal Civil Rights Compliance Checklist, which is enclosed for the Office's review.

C. Provide Training to Subrecipients Regarding Their Obligations to Comply with Federal Civil Rights Laws

The OAG does not appear to provide any training or technical assistance to its subrecipients about their civil rights obligations. To ensure that subrecipients are aware of their obligations under applicable federal civil rights laws, such as to provide services to LEP individuals and to have procedures in place to receive and evaluate complaints alleging discrimination from employees and beneficiaries, the Office should provide periodic, mandatory training programs for subgrantees. The OAG should provide this training at least once during a grant cycle, whether it provides the training in person, during a teleconference, or through other means. The OCR is available to provide the Office with technical assistance in developing civil rights training programs. In addition, the OAG should encourage subrecipients to seek technical assistance from Office staff regarding their statutory and contractual civil rights obligations.

D. Develop Comprehensive Policy for Addressing Discrimination Complaints

As previously noted, the OAG has procedures in place for responding to discrimination complaints from its own employees, and the DOL provides a forum for resolving employment and services discrimination complaints filed by OAG and subrecipient employees and beneficiaries. Nonetheless, the Office has an obligation as a recipient of federal financial assistance to have in place a policy that comprehensively addresses how it responds to employment and services discrimination complaints that it receives from OAG and subrecipient employees and beneficiaries. Specifically, it should ensure that it has a policy for addressing discrimination complaints that includes at a minimum the following elements:

- designating a coordinator who is responsible for overseeing the complaint process;
- notifying employees of the OAG, as well as beneficiaries and subrecipients, of prohibited discrimination in funded programs and activities and the Office's policy and procedures for handling discrimination complaints;
- establishing written procedures for receiving discrimination complaints from subrecipient employees and beneficiaries;
- referring each complaint to the appropriate agency for investigation and resolution, such as the DOL or the EEOC; or referring the complaint to the OCR, which will review the complaint and work with the OAG to resolve it;

Michelle Vetter, Grants/Contracts Officer  
North Dakota Office of Attorney General  
November 23, 2009  
Page 11 of 11

- notifying the OCR in writing when the OAG refers a discrimination complaint to another agency or when the Office investigates the complaint internally; and
- training OAG program staff on their responsibility to refer discrimination complaints or potential discrimination issues to the Office's complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

In an effort to assist the OAG in developing a comprehensive complaint policy, the OCR has prepared sample procedures for responding to discrimination complaints, which are enclosed for the Office's review. While the OAG's adoption of these procedures would satisfy the instant recommendation, the OCR also recognizes that there may be other, equally effective complaint procedures that accomplish the same objectives. Additional information about the applicable laws, complaint forms, and the investigative process can be found at <http://www.ojp.usdoj.gov/about/offices/ocr.htm>.

### III. Conclusion

We find that the OAG should implement the OCR's recommendations to ensure substantial compliance with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the Office in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible OAG official contact Attorney Advisor Christopher Zubowicz to develop a timeline and goals for implementing the OCR's recommendations.**

Thank you for your cooperation and the assistance of your staff during the compliance review process. If you have any questions, please contact Mr. Zubowicz at [REDACTED]

Sincerely,

  
Michael L. Alston  
Director

Enclosures

cc: Ms. Ginny E. Peterson  
North Dakota Office of the Attorney General