



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

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*Washington, D.C. 20531*

**Via Certified Mail**

October 4, 2010

Director Garth L. Wheeler  
Virginia Department of Criminal Justice Services  
202 Ninth Street, 10<sup>th</sup> Floor  
Richmond, VA 23219

Re: Compliance Review Report for Virginia Department of Criminal Justice Services  
Docket No. 09-OCR-0068

Dear Mr. Wheeler:

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

On April 15, 2009, the OCR conducted an onsite visit to the DCJS' offices in Richmond, Virginia, to interview DCJS administrators and to conduct a training program for DCJS administrators and program staff on the federal civil rights laws that the OCR enforces. The OCR would like to thank DCJS staff, especially Office of Grants Management Section Chief Janice Waddy, for assisting OCR attorney Kimberly Scheckner during her onsite visit and throughout this review.

Based on the DCJS' responses to our data request and the information that the OCR gathered during and subsequent to our onsite visit, the OCR sent the GCC a draft Compliance Review

Report on July 12, 2010, and requested that the DCJS respond with any factual corrections to the draft within 30 days from its receipt of the draft. Having not received any response from the DCJS, the OCR issues this final Report.

In regard to the limited scope of our review, the OCR concludes that the DCJS is not fully compliant with the federal civil rights laws that the OCR enforces. In particular, we have reservations about whether the DCJS has adequate complaint procedures in place to respond to discrimination complaints from employees and beneficiaries 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 DCJS' methods for monitoring the civil rights compliance of subrecipients.

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

### **I. Overview**

This Compliance Review Report first examines the DCJS' 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 DCJS' 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 DCJS' general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the DCJS 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 in the delivery of services.

##### **1. Standard Assurances**

Grant administrators located within the DCJS' offices are responsible for administering DCJS grants, including DOJ subawards. Before the DCJS releases DOJ funds, subrecipients must sign a "General Grant Conditions and Assurances" document, which contains the following language regarding civil rights laws:

6. **DISCRIMINATION PROHIBITED:** No person shall, on the grounds of race, religion, color, national origin, sex, or handicap be excluded from participation in, be denied the benefits or be otherwise subjected to discrimination under or denied

employment in connection with, grants awarded pursuant to the Justice Assistance Act of 1984, and the implementing regulations 28 CFR Part 42, Subparts C, D, E, and G, or any project, program, activity, or subgrant supported or benefiting from the grant. The applicant must comply with the provisions and requirements of Title VI of the Civil Rights Act of 1964 and its implementing regulations 28 CFR Part 42, Subparts C, D, E, and G, or any project, program, activity, or subgrant supported or benefiting from the grant. The applicant must further comply with Section 504 of the Rehabilitation Act of 1973, as amended, and its implementing regulations; the Age Discrimination Act of 1973, as amended, and its implementing regulations; and Title IX of the Education Amendments of 1972; Title 11 of the Americans with Disabilities Act (ADA) (1990); (42 USC. 12131012134 & 28 CFR 35).<sup>1</sup>

7. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM: Each applicant certifies, that it has executed and has on file, an Equal Employment Opportunity Program which conforms with the provisions of 28 CFR Section 42.301, et. Seq., Subpart E, or that in conformity with the foregoing regulation, no Equal Employment Opportunity Program is required.<sup>2</sup>

The applicant organization having 50 or more employees who would receive amounts of \$500,000 or more, or grants which in the aggregate exceed \$500,00 or more, in any fiscal year must submit a copy of their Equal Employment Opportunity Plan (EEOP) to the DCJS for review. For continuation grant funding that exceed[s] these amounts in any fiscal year the applicant must submit a statistical update from the previous year's plan.<sup>3</sup>

8. 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

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1 The DCJS should review and, as necessary, edit all of the legal citations currently referenced in its grant documents to reflect the correct legal citations contained in the OJP's Standard Assurances, which we have enclosed for your review; see also Section II.B. of this Report, which contains an excerpt from the enclosed document.

2 Subrecipients are not, however, notified in this document that they must submit to the OCR either an EEOP or the OJP's Certification Form stating that they are eligible for a full or partial exemption from the EEOP requirement.

3 Please be advised that unless exempt from the EEOP requirements, recipients with 50 or more employees who have received a single award of more than \$25,000 but less than \$500,000 are also required to prepare an EEOP; such recipients need to maintain the EEOP on file but do not need to submit it to the OCR. If a recipient receives a single award of \$500,000 or more, the agency needs to submit the EEOP to the OCR for review. However, recipients that are a non-profit organization, a medical institution, an educational institution, or an Indian tribe are completely exempt from the EEOP requirements.

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 DCJS.<sup>4</sup>

(General Grant Conditions and Assurances at 2.) Subrecipients must also sign a certification at the end of the document, which states, in relevant part, that “there has been appropriate coordination with affected agencies, and that the applicant will comply with the provisions of all other federal and state laws and rules and regulations that apply” to the award. (*Id.* at 5.) These are the only provisions in the DCJS’ standard assurances that reference civil rights requirements. In addition to the General Grant Conditions and Assurances document, information on a subrecipient’s obligations and requirements may be contained in the application guidelines posted on the DCJS website for the particular DOJ funding program; none of these materials, however, appear to contain any additional information concerning the civil rights obligations of subrecipients.

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

In the DCJS’ response to the OCR’s data request, the DCJS stated that it monitors its subrecipients but that it does not monitor specifically for compliance with applicable civil rights requirements. During the OCR’s onsite visit, a DCJS grants administrator told the OCR that DCJS staff conducts onsite visits of subrecipients, but that currently, these visits are triggered by the receipt of a complaint that something has gone awry with the execution of the program<sup>5</sup> rather than being conducted on a quarterly or semi-annual basis. The administrator told the OCR that DCJS intends to make the monitoring process more regular and systematic in the coming year.

DCJS staff reviews and gathers information on the subrecipient’s implementation of DOJ funding through the submission of quarterly financial and progress reports as well as through a “Monitor Log” that grant monitors use during onsite visits, copies of which were provided to the OCR subsequent to the onsite visit. None of these documents, however, contain any specific questions regarding the subrecipient’s compliance with civil rights obligations; that is, none asks for the contact information of the person responsible for submitting findings of discrimination to the OCR; whether a Federal or State court or administrative agency has issued a finding of discrimination against the subrecipient during the last three years on the grounds of race, color, national origin, age, sex, religion, or disability; whether the subrecipient has submitted an EEOP or an EEOP certification form to the OCR; or whether the subrecipient needs or has requested

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<sup>4</sup> This document does not require subrecipients to forward any such findings of discrimination to the OCR, however. It also fails to include discrimination on the basis of disability or religion among the findings of discrimination for which the OCR must be informed. *See* OJP Standard Assurances, referenced in footnote 1, above.

<sup>5</sup> The administrator noted that these have not been complaints of discrimination.

any training or technical assistance regarding its duties to comply with applicable civil rights laws.

### **3. Training and Technical Assistance**

In its data response, the DCJS stated that it does not provide any formal training or technical assistance for subrecipients regarding their duties to comply with applicable federal civil rights laws. During the OCR's onsite visit, the DCJS grants administrator told the OCR that in the past, there had been training for all new grant recipients, but that in recent years, most subrecipients have been on continuation grants, and thus, there have been no new rollouts to subrecipients. This administrator told the OCR that she anticipates formulating trainings for new grant recipients in the next fiscal year.

### **4. Complaint Procedures**

During the onsite visit, a DCJS grant administrator explained that although the DCJS has complaint procedures to process employee complaints of employment discrimination and harassment, there is no process in place for the DCJS to act on discrimination complaints from employees or beneficiaries of subrecipients.<sup>6</sup>

As discussed in Section I.A.1 of this Compliance Review Report, written notice is provided to subrecipients in the General Grant Conditions and Assurances document that in the event that 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, national origin, or sex against a recipient of funds, a copy of such findings must be forwarded to the DCJS. As noted in footnote 4 above, however, grantees are not advised that any such findings of discrimination, including findings of disability discrimination, are to be forwarded to the OCR.

Based on the OCR's research, it appears that the Virginia Human Rights Council (HRC) has jurisdiction over allegations of conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, national origin, sex, age, marital status, or disability, pursuant to the Virginia Human Rights Act, Chapter 39, 2.2-3900 et seq. of the Code of Virginia. It thus appears that employees and beneficiaries of DCJS subrecipients may file discrimination complaints with the HRC and the EEOC.<sup>7</sup>

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<sup>6</sup> In its data response, the DCJS stated that if the DCJS receives a complaint from an employee or a beneficiary of a subrecipient, a grant monitor will research the complaint. During the onsite visit, a grant administrator explained that in theory, such a complaint would then be forwarded to the Criminal Justice Services Board for processing; the administrator confirmed, however, that this has never before occurred and that currently, there is no written procedure in place for grant monitors or the Board to follow.

<sup>7</sup> The HRC and EEOC are parties to a Memorandum of Understanding whereby the HRC will take all charges alleging a violation of Title VII, the ADEA, or the ADA where the Agencies have jurisdiction

During the onsite visit, the DCJS administrator confirmed to the OCR that the DCJS is unaware of any complaints of discrimination in grant-funded activities by employees or beneficiaries of its subrecipients.

## **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.* In evaluating the DCJS' 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**

Subsequent to the OCR's onsite visit, DCJS administrators confirmed that the DCJS currently administers the following DOJ grant programs: the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, the American Recovery and Reinvestment Act Justice Assistance Grant Program, the Juvenile Accountability Block Grant (JABG) Program, as well as programs authorized by the Violence Against Women Act (VAWA), the Victims of Crime Act (VOCA), and Title II and Title V of the Juvenile Justice and Delinquency Prevention Act (JJDP).

The administrator explained that when grant funds become available, the DCJS will post grant solicitations on the DCJS' website; in addition, letters are sent to past recipients as well as various constituents on the DCJS mailing list, including sheriffs, city managers, chiefs of police, and social service agencies. As with any applicant, all faith-based agencies are eligible to apply for DOJ subawards and the DCJS approves or denies funding based on the merits of the application.

Once DCJS staff receive grant applications under a particular funding solicitation, they review the applications and send grant application summaries and a spreadsheet showing dollar amounts requested and recommended to Criminal Justice Services Board subcommittees for their review. The subcommittees, comprised of subject-matter experts in a particular field, then make recommendations to the full 29-member Board, which is comprised of cabinet appointees from

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and will dual-file the charges with the EEOC, so long as the allegations meet the minimum requirements of those Acts. In order to facilitate the assertion of employment rights, the MOU further provides that the EEOC and the HRC each designate the other as its agent for the purpose of receiving charges, even if such charge is non-jurisdictional with the receiving Agency.

the larger criminal justice and victim services community, including members of law enforcement, Commonwealth attorneys, municipal groups, legislators, and social services organizations.

During the onsite visit, the grants administrator told the OCR that faith-based organizations are made aware of funding opportunities through word of mouth in the criminal justice community and that the DCJS also reaches out to faith-based organizations by including them on the DCJS' mailing list. Several DCJS grant personnel told the OCR that the DCJS treats faith-based organizations equally in its funding decisions and does not discriminate for or against an eligible applicant based on its religious character. As discussed in Section I.A.1 of this Report, absent from the DCJS standard assurances and application guidelines is any reference to the Equal Treatment Regulations.

Subsequent to the onsite visit, the DCJS provided the OCR with its grant application, which asks the applicant to self-designate whether it is a faith-based organization; a DCJS grant administrator told the OCR that applicants are asked this question for informational purposes only. As noted above, the application guidelines for the various grants that the DJCS administers contain no reference to the ETRs.

In responding to the OCR's data request for information on the DCJS' funding of faith-based organizations in fiscal years (FY) 2006 and 2007, the DCJS reported that in fiscal year (FY) 2006, the following three faith-based organizations applied for and received DOJ funding: (1) the YWCA of Richmond received a VOCA grant in the amount of \$56,331 for its Victims of Crime Sexual Assault Grant Program, which provides comprehensive information and direct services to sexual assault victims in Richmond and neighboring counties; (2) the YWCA of Lynchburg received a VAWA grant in the amount of \$23,529 for its Domestic Violence Prevention Center Court Advocacy & Victim Services Program; and (3) the YWCA of South Hampton's Road received a VAWA grant in the amount of \$15,604 for its Violence Against Women Victim Services Liaison Program.

Subsequent to the onsite visit, the DCJS informed the OCR that the same three faith-based organizations have applied for and received funding for their respective one-year programs through fiscal year 2009 and that all three are expected to continue receive funding in FY 2010 pending final approval by the Criminal Justice Services Board.<sup>8</sup> A DCJS grant administrator

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<sup>8</sup> Specifically, the DJCS reported to the OCR that in FY 2007, the YWCA of Richmond's Victims of Crime Sexual Assault Program received a VOCA grant in the amount of \$58,234 for the grant period July 1, 2007, to June 30, 2008; it received a VOCA grant in the amount of \$49,584 for the grant period July 1, 2008, to June 30, 2009; and it received a VOCA grant in the amount of \$55,534 for the grant period July 1, 2009, to June 30, 2010. In FY 2007, the YWCA of Lynchburg's Domestic Violence Prevention Center Court Advocacy & Victim Services Program received a VAWA grant in the amount of \$20,000 for the grant period January 1, 2008, to December 31, 2008; it received a VAWA grant in the amount of \$21,000

confirmed that no issues have arisen regarding compliance with the Equal Treatment Regulations for any of the above-referenced grants.

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

As already noted in this Report, the DCJS does not reference the Equal Treatment Regulations in its standard assurances or application guidelines or provide any training to its subrecipients regarding subrecipients' obligations to comply with ETR requirements. In the DCJS' response to the OCR's data request, the DCJS stated that the same review procedures are in place for all programs, whether faith-based or not. It further stated, however, that the DCJS requires its applicants for VAWA funding to have federal tax exempt status under 26 U.S.C. § 501(c)(3)<sup>9</sup> to ensure these applicants' non-profit status.

As discussed in Section I.A.1 of this Compliance Review Report, although the DCJS conducts onsite monitoring visits of DOJ subrecipients, it does not appear that the grant monitors specifically monitor for compliance with applicable civil rights laws, including faith-based organizations' compliance with the ETRs.

In connection with this Review, the OCR contacted the YWCA of Richmond, a nonprofit, tax-exempt organization based in Richmond, Virginia, which, as noted above, has received continued VOCA funding for its Victims of Crime Sexual Assault Grant Program since FY 2006. According to the YWCA of Richmond's website, this program, which appears to have been renamed the "Sexual Violence Program," offers free comprehensive crisis services for victims of sexual assault over 12 years of age and their families, including individual and group counseling, access to a 24-hour hotline, 24-hour hospital accompaniment, court accompaniment, emergency shelter, and other referral services.

The Chief Program Officer of the YWCA told the OCR that notwithstanding its Christian roots, the YWCA does not consider itself to be a faith-based organization<sup>10</sup> and that there are no faith-

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for the grant period January 1, 2009, to December 31, 2009; and it received a VAWA grant in the amount of \$23,350 for the grant period January 1, 2010, to December 31, 2010. In FY 2007, the YWCA of South Hampton's Road Violence Against Women Victim Services Liaison Program received a VAWA grant in the amount of \$13,263 for the grant period January 1, 2008, to December 31, 2008; it received a VAWA grant in the amount of \$13,926 for the grant period January 1, 2009, to December 31, 2009; and it received a VAWA grant in the amount of \$16,367 for the grant period January 1, 2010, to December 31, 2010.

<sup>9</sup> Please be aware that the JJDPA, Pub.L. 93-415, 42 U.S.C. § 5601 *et seq.*, requires nonprofit organizations funded under that statute to obtain tax exempt status under 26 U.S.C. § 501(c)(3). The OCR understands that many of the DCJS' OJP grants are authorized under the JJDPA. The OCR recommends that the DCJS contact your relevant grant advisor at OJP to discuss this requirement.

<sup>10</sup> This is consistent with the applications of each of the YWCAs that applied to the DCJS for funds in



based components in its hiring practices or in its delivery of services; she also confirmed that the beneficiaries of the YWCA's various programs represent many different religions. At the time the OCR interviewed the Chief Program Officer, she explained that the National YWCA was in the process of revising its mission statement to delete the reference to the organization's Christian roots. A DCJS grant administrator confirmed that on May 3, 2009, the YWCA General Assembly voted to revise the YWCA mission statement to the following: "YWCA is dedicated to eliminating racism, empowering women and promoting peace, justice, freedom and dignity for all."

The OCR has found no evidence that the YWCA of Richmond's federally-funded program has used its VAWA funding for inherently religious purposes or that it has discriminated against employees or beneficiaries in its hiring practices or in its delivery of services on the basis of religion or religious belief in violation of the Equal Treatment Regulations.

Subsequent to the onsite visit, a DCJS administrator informed the OCR that although the DCJS has considered the YWCA a faith-based organization to date, in light of recent developments, the YWCA will no longer be deemed a faith-based organization beginning the next grant cycle.

## **II. Recommendations**

The DCJS already has some procedures in place for monitoring the civil rights compliance of its subrecipients. To strengthen the DCJS' monitoring efforts, the OCR offers the following six recommendations: (1) develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints; (2) specify all potentially applicable civil rights laws and implementing regulations, including the DOJ's Equal Treatment Regulations, in the DCJS' Standard Subgrant Conditions and Grant Application Guidelines; (3) monitor for compliance with federal civil rights laws during onsite monitoring visits; (4) provide subrecipients with an EEOC certification form; (5) require all subrecipients to submit findings of discrimination to the OCR; (6) allow VAWA subrecipients to demonstrate nonprofit status by any of the means identified in the DOJ's Equal Treatment Regulations; and (7) provide comprehensive training to subrecipients on their obligations to comply with federal civil rights laws.

### **A. Develop Comprehensive Complaint Procedures**

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

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recent years; that is, none of the YWCAs self-designated as faith-based.

- 1) designating a coordinator who is responsible for overseeing the complaint process<sup>11</sup>;
- 2) notifying employees and subrecipients of prohibited discrimination in funded programs and activities and the DCJS' policy and procedures for handling discrimination complaints<sup>12</sup>;
- 3) establishing written procedures for receiving discrimination complaints from subrecipient employees and beneficiaries;
- 4) referring each complaint to the appropriate agency for investigation and resolution, such as the Virginia Human Rights Council or the U.S. Equal Employment Opportunity Commission; or referring the complaint to the OCR, which will review the complaint and work with the DCJS to resolve the complaint;
- 5) notifying the OCR in writing when the DCJS refers a discrimination complaint to another agency or when the DCJS investigates the complaint internally; and
- 6) training DCJS program staff on their responsibility to refer discrimination complaints or potential discrimination issues to the DCJS' 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](http://www.ojp.usdoj.gov/ocr/crc). Developing a comprehensive policy for addressing discrimination complaints should be a top priority for the DCJS. We have enclosed sample policies for your consideration in developing your complaint procedures.

**B. Specify All Potentially Applicable Civil Rights Laws and Implementing Regulations, Including the DOJ's Equal Treatment Regulations, in the DCJS' Standard Subgrant Conditions and Grant Application Guidelines**

As discussed in Section I.A.1 of this Report, currently, the DCJS requires grantees to provide assurances that they and their subrecipients will comply various civil rights laws and implementing regulations. We recommend that the DCJS supply grantees with a comprehensive list of these statutes and their implementing regulations in the DCJS' General Grant Conditions and Assurances and application guidelines. Thus, in lieu of the language under the heading "DISCRIMINATION PROHIBITED" in paragraph 6 of the DCJS' General Grant Conditions and Assurances document, the DCJS should consider substituting the following language:

Applicants must assure and certify that they will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed

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<sup>11</sup> See 28 C.F.R. § 31.202(a)(1).

<sup>12</sup> See 28 C.F.R. § 31.202(b)(3).

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) and 28 C.F.R. pt. 38 (Equal Treatment Regulations).

OJP Standard Assurances, ¶6. The DCJS should also consider including a provision in its standard assurances and application guidelines requiring subrecipients to certify that they will provide meaningful access to their programs and activities to those persons who may be limited English proficient (LEP). In June of 2002, the DOJ issued guidance for its funding recipients and state subrecipients that addressed taking reasonable steps to provide meaningful access to funded programs and activities pursuant to Title VI and the Safe Streets Act. *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41, 455 (June 18, 2002). We encourage you to visit [www.lep.gov](http://www.lep.gov) for additional information about how to provide meaningful access to your federally funded programs to LEP persons.

Additionally, the DCJS may want to include a provision in its standard assurances and application guidelines 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.

### **C. Monitor for Compliance with Federal Civil Rights Laws During Onsite Monitoring Visits**

The DCJS is taking steps to ensure that DOJ subrecipients are complying with grant requirements by conducting annual onsite monitoring visits. These onsite monitoring visits, however, do not currently address federal civil rights laws.

Pursuant to the DCJS' responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the DCJS should add a civil rights component to its onsite monitoring visits. The DCJS should consider expanding its existing monitoring documents to include questions relating to EEOP requirements, the requirement to submit findings of discrimination to 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 Title IX of the Education Amendments of 1972, and whether the subrecipient is taking steps to provide meaningful access to its programs and activities to individuals with limited English proficiency

(LEP). In addition, these documents should include questions on whether the subrecipient is complying with the Equal Treatment Regulations by not expending federal funding on inherently religious activities and not discriminating based on religion in the delivery of services, as well as whether the subrecipient needs training or technical assistance to comply with applicable civil rights laws. We have enclosed a sample Civil Rights Monitoring Checklist for your consideration in developing your monitoring procedures.

**D. Provide Subrecipients with an EEOP Certification Form**

As discussed in Section I.A.1 of this Report, the DCJS' General Grant Conditions and Assurances agreement and grant application guidelines currently advise subrecipients to submit an EEOP to the DCJS as required by applicable law. This approach however, does not fully convey the EEOP requirements under 28 C.F.R. §§ 42.301-.308; nor does it relay sufficient information for an applicant to determine whether it is required to prepare and/or submit an EEOP to the OCR or simply complete the EEOP Certification form attesting it does not have to satisfy this requirement. We have enclosed a copy of the OCR's EEOP Certification Form that we require funding recipients to complete; this form contains detailed information concerning when funding recipients are required to prepare and file an EEOP, when they are required to submit an EEOP to the OCR, and when they are exempt from the EEOP requirement altogether. We recommend that the DCJS prepare a similar form containing all of the relevant information that applicant subrecipients must complete and submit to the OCR and the DCJS if they are not required to submit an EEOP.

**E. Require All Subrecipients to Submit Findings of Discrimination to the OCR**

As discussed in this Section I.A.1 of this Report, the DCJS currently advises grant recipients in its standard assurances and grant application guidelines to submit findings of discrimination issued by a federal or state court or federal or state administrative agency on the basis of race, color, religion, national origin or sex to the DCJS. As already noted in this Report,<sup>13</sup> the DCJS should revise these provisions to reflect that any such findings of discrimination should be forwarded to the OCR, including findings of disability discrimination.

**F. Allow Subrecipients to Demonstrate Nonprofit Status by Any of the Means Identified in DOJ's Equal Treatment Regulations**

As discussed in Section I.B.1 of this Compliance Review Report, the DCJS requires applicants to obtain federal tax exempt status under 26 U.S.C. § 501(c)(3) in order to be eligible for VAWA funding. Unless 501(c)(3) status is required under the particular grant program (e.g., programs funded under the federal Juvenile Justice and Delinquency Prevention Act), the DCJS should be mindful that applicants for VAWA funding may also demonstrate nonprofit status by any of the

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<sup>13</sup> See footnote 4, above.

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following means identified in the DOJ's Equal Treatment Regulations: (1) proof that the Internal Revenue Service recognizes the organization as being tax exempt under 501(c)(3) of the Internal Revenue Code; (2) a statement from a state taxing body or state secretary of state certifying that the organization is a nonprofit organization and that no part of the organization's net earnings may benefit any private shareholder or individual; (3) a certified copy of a certificate of incorporation or similar document establishing nonprofit status; and (4) any of the above, if it applies to a state or national parent organization, with a statement by the state or national parent organization that the applicant is a local nonprofit affiliate. 28 C.F.R. § 38.1(g).

**G. Provide Comprehensive Training to Subrecipients on Federal Civil Rights Laws**

In its data response, the DCJS stated that it does not provide any training for its subrecipients about their civil rights obligations. To ensure that subrecipients 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 on the basis of race, color, religion, national origin, sex, or disability, the DCJS should provide periodic training programs for its subrecipients on the applicable federal civil rights laws. The DCJS should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the DCJS provides the training in person, during a teleconference, or through other means. The OCR is available to provide the DCJS with technical assistance in developing civil rights training programs.

**Conclusion**

We find that the DCJS is not fully compliant with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the DCJS in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible DCJS official contact Attorney Advisor Kimberly Scheckner 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. Scheckner at [REDACTED]

Sincerely,

/s/

Michael L. Alston  
Director  
Enclosures