

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 137
DEPARTMENT OF JUSTICE

FILED

04/22/2022 9:21 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: The Bias Response Emergency Fund provides a financial resource to victims of bias incidents/crimes.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/02/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Valerie Smith
503-378-6254
valerie.smith@doj.state.or.us

1162 Court St NE
Salem, OR 97301

Filed By:
Rebecca Shaw
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/02/2022

TIME: 2:00 PM - 4:00 PM

OFFICER: Valerie Smith

ADDRESS: Dept of Justice

1162 Court St NE

Salem, OR 97301

SPECIAL INSTRUCTIONS:

This will be an online or telephonic hearing.

NEED FOR THE RULE(S)

Prior to this emergency fund, financial assistance for victims of hate crimes were fragmented across multiple agencies depending on identity, and financial assistance for victims of bias incidents did not exist. The Bias Response Program delineated money from its 2021 budget for emergency needs for bias victims, whether victimized in a bias incident or bias crime. These rules provide structure and consistency for payments from the fund to be spent on victims of bias crimes and bias incidents.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 147.380 Service referral for bias incidents

ORS 147.005-147.463 Compensation of Crime Victims, Crime Victim Compensation Program

Department of Justice Chapter 137, Division 76 OARs for Crime Victim Compensation Program

Department of Human Services' OARs for TA-DVS (Temporary Assistance for Domestic Violence Survivors), including 461-135-1200 and 461-135-1230

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Bias Response Emergency Fund promotes racial equity in Oregon in its provision of a first-of-its-kind financial

resource to aid victims in their recovery from bias incidents and bias crimes. Examples include allowing for "other documentation" from payees beyond receipts and invoices, specifying that bias victims do not need to report to police, and that victims need not be US citizens and need not be documented non-citizens. Immigration status is not checked, inquired about, or otherwise any condition of application. The Fund provides confidentiality protections under ORS 147.380(6), reflecting that communities of color and immigrant and refugee communities may be hesitant to engage with government unless their confidentiality is assured.

FISCAL AND ECONOMIC IMPACT:

Up to \$1,000.00 per victim or \$2,000.00 per family, up to the current emergency funding of \$100,000.00.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses will not be affected by these rules and were not involved in the development of these rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Hate Crimes and Bias Incidents Steering Committee, Oregon DOJ General Counsel, as well as numerous culturally and population specific community-based partners were consulted.

RULES PROPOSED:

137-068-0010, 137-068-0020, 137-068-0030, 137-068-0040, 137-068-0050

ADOPT: 137-068-0010

RULE SUMMARY: These rules dictate the allowable costs, eligibility, application process, and maximum financial assistance for the Bias Response Emergency Fund to assist victims of bias crimes and bias incidents in their recovery in the aftermath of bias.

CHANGES TO RULE:

137-068-0010

Definitions

As used in this rule:¶

(1) "Applicant" means the victim, or the victim's legal guardian, or in the case of a homicide, one member of the immediate family of the decedent, who applies for emergency monies pursuant to this rule.¶

(2) "Bias crime" means the commission, attempted commission or alleged commission of an offense described in ORS 166.155 or 166.165.¶

(3) "Bias incident" has the meaning given that term in ORS 147.380(1)(b).¶

(4) "Department" means the Oregon Department of Justice.¶

(5) "Eligible costs" are approved expenses necessary for an applicant to respond to a bias incident or bias crime that occur within ninety (90) days of the bias incident or bias crime. Eligible costs are limited to costs incurred for the following purposes:¶

(a) Security measures, including, but not limited to, buying and installing home security cameras and video doorbells, changing locks, repairing windows and doors, phone or internet bills or installation, interpreter costs to interact with non-governmental agencies assisting in security measures.¶

(b) Relocation for safety purposes, whether temporary or permanent, including, but not limited to, rent or partial

rent, security deposit, moving costs, emergency hotel stay, rental car, vehicle repair for the purpose of relocation, other transportation costs, pet boarding. ¶

(c) Costs incurred due to the bias incident or bias crime rendering the victim unable to work, including, but not limited to, rent or partial rent, food costs, phone or internet bills, other utility bills. ¶

(d) Property damage directly resulting from the bias incident, including, but not limited to, repairs/clean-up for visible hate speech etched or graffitied on personal property or a necessary personal item, clean-up costs for damage done to the victim's yard, vehicle or home, and insurance deductibles when insurance has covered the primary losses in these situations. The Program may consider the level of re-traumatization caused should the property remain unfixed. ¶

(e) Eligible costs do not include funeral costs, counseling costs, medical costs, rehabilitation costs, loss of earnings, loss of support to dependents, child support, pain and suffering, purchase of a firearm or other weapon, payment of a fine or other penalty, payment for relocation of household or personal belongings from another state, purchase of a pet or other guard animal, and attorney costs or other legal fees. ¶

(6) "Payee" is the business, vendor, landlord, or other recipient of funds that provides goods or services to an applicant that qualify as eligible costs. ¶

(7) "Program" means the Oregon Department of Justice's Bias Response Program. ¶

(8) "Victim" means an individual directly targeted and harmed in Oregon due to a bias incident or bias crime.

Statutory/Other Authority: ORS 147.380, ORS 147.005-147.463

Statutes/Other Implemented: ORS 147.380, ORS 147.005-147.463

ADOPT: 137-068-0020

RULE SUMMARY: These rules dictate the allowable costs, eligibility, application process, and maximum financial assistance for the Bias Response Emergency Fund to assist victims of bias crimes and bias incidents in their recovery in the aftermath of bias.

CHANGES TO RULE:

137-068-0020

Eligibility

An applicant is eligible for financial assistance under this rule if the Program finds, in its sole discretion, that:

(1) The applicant is either (i) a victim of a bias crime or bias incident; (ii) the legal guardian of a victim of a bias crime or bias incident; or (iii) the decedent of the deceased victim of a bias crime or bias incident.

(2) The bias incident or bias crime occurred in Oregon in the last ninety (90) days.

(3) The application for the emergency monies was filed with the Program within ninety (90) days of the occurrence of the bias incident or bias crime, unless the Program finds good cause exists for the failure to apply within ninety (90) days. "Good cause" for failure to apply within ninety (90) days of the bias incident or bias crime exists if the Program finds that:

(a) The victim fails to apply based on a reasonable fear that doing so would result in retaliation to the victim or another person;

(b) The victim fails to apply due to the traumatic nature of the crime;

(c) The victim is physically unable to apply because of the severity of the trauma resulting from the crime; or

(d) Any other circumstance for which the Department determines satisfactory.

(e) Good cause does not exist if the victim's financial need arises more than ninety (90) days after the bias incident or bias crime occurs.

(4) The application for the emergency monies is not the result of collusion between the applicant and the perpetrator of the victim.

(5) The applicant certifies that they have a financial need for the assistance.

(6) The Department has received appropriations, limitations, allotments or other expenditure authority sufficient to allow the Department, in the exercise of its reasonable administrative discretion, to make an award under this section.

(7) An individual may not receive emergency monies more than one (1) time during a one-year period regardless of the number of reported bias crimes or bias incidents.

Statutory/Other Authority: ORS 147.380, ORS 147.005-147.463

Statutes/Other Implemented: ORS 147.380, ORS 147.005-147.463

ADOPT: 137-068-0030

RULE SUMMARY: These rules dictate the allowable costs, eligibility, application process, and maximum financial assistance for the Bias Response Emergency Fund to assist victims of bias crimes and bias incidents in their recovery in the aftermath of bias.

CHANGES TO RULE:

137-068-0030

Application Process

Upon referral to the application for emergency monies by the Bias Response Hotline, an applicant or the victim may submit an application through the Program's application portal for emergency monies for eligible costs.¶

(1) Application information: The applicant must provide the date of application; the name of the victim; the name, role, and contact information for the applicant if the applicant is filing the application on behalf of another person; the victim's phone number (if they have one); the victim's physical address; the victim's email address (if they have one); a description of the bias incident or bias crime; the date of the bias incident or bias crime; a description and exact costs for which emergency monies are sought; a statement of financial need indicating they do not have existing resources to cover the eligible costs (no proof or documentation required); payee information (described below); an agreement to a limited release of information (described below); and certification from the applicant indicating that the application is needed to address a specific crisis situation or episode of need related to a bias incident or bias crime that has occurred in the last ninety (90) days.¶

(2) Payee information: The application must include full payee information, including payee name, payee mailing address, payee physical address (if different), payee phone number, and the victim's account number(s) where applicable, as well as any invoices, receipts, bills, or other documentation of eligible costs that the Program may require in its sole discretion.¶

(3) Limited release: The applicant must agree to, and have the authority to agree to, a time-limited release of information so that the Program may arrange for payments to be made within the Department finance process, so the Department may arrange for payment to the payee, and so the Department may communicate with the prosecutor's office to request restitution to the Department if there is a criminal prosecution.¶

(4) Neither a police report nor evidence of the applicant's citizenship or immigration status is a condition of applying for financial assistance under this rule.

Statutory/Other Authority: ORS 147.380, ORS 147.005-147.463

Statutes/Other Implemented: ORS 147.380, ORS 147.005-147.463

ADOPT: 137-068-0040

RULE SUMMARY: These rules dictate the allowable costs, eligibility, application process, and maximum financial assistance for the Bias Response Emergency Fund to assist victims of bias crimes and bias incidents in their recovery in the aftermath of bias.

CHANGES TO RULE:

137-068-0040

Financial Information

(1) Financial Assistance Amount and Limitations: An applicant may receive no more than \$1,000.00 in aggregate financial assistance in a 365-day period, unless the Program finds good cause to exceed that amount.¶

(a) When multiple family members are victims of the same bias crime or bias incident, no more than \$2,000.00 shall be awarded to the family in a 365-day period, regardless of the number of victims or the makeup of the family, unless the Program finds good cause.¶

(b) When multiple family members of a deceased victim apply for emergency monies, no more than \$2,000.00 shall be awarded to the family in a 365-day period, regardless of the size or makeup of the family, unless the Program finds good cause.¶

(c) When multiple legal guardians of a victim apply for emergency monies, no more than \$1,000.00 shall be awarded to the family in a 365-day period, regardless of the size or makeup of the family, unless the Program finds good cause to exceed that amount.¶

(2) The fund is a payor of last resort. All prior and existing resources, if available at the time of application, must be utilized before the fund can pay out, including insurance, and obligatory landlord and HOA remedies.¶

(3) Payments: The emergency fund only provides payments to payees. If a payee declines to accept payment from the Department for any reason, the Department will cancel payment and notify the victim.¶

(4) Limitations: There is no guaranteed right or privilege to receive emergency monies from the Department. The emergency monies are a limited resource, and once those funds are expended, no more funds will be available to pay costs that would otherwise be compensable to eligible victims.

Statutory/Other Authority: ORS 147.380, ORS 147.005-147.463

Statutes/Other Implemented: ORS 147.380, ORS 147.005-147.463

ADOPT: 137-068-0050

RULE SUMMARY: These rules dictate the allowable costs, eligibility, application process, and maximum financial assistance for the Bias Response Emergency Fund to assist victims of bias crimes and bias incidents in their recovery in the aftermath of bias.

CHANGES TO RULE:

137-068-0050

Dual Reports, Confidentiality and Department Review

(1) Dual reports: In the event of competing allegations of bias between two persons, both alleging the other has perpetrated bias against them, the application for emergency fund will be reviewed by three members of the Department's Civil Rights Unit. A determination will be made within two weeks of receipt of the application. The applicants will not be made aware of the competing report of bias to protect the confidentiality and safety of the other reporter. Emergency funds may still be awarded to each victim.¶

(2) Confidentiality: Pursuant to ORS 147.380(6), any data collected by the Department under this section that reveals the identity of any individual is exempt from public disclosure. Information may be shared between state government offices if the fund is audited.¶

(3) Review: The Department may deem an application ineligible if the applicant fails to meet eligibility requirements, fails to provide requested information in writing by the date required by the Department, or if the application contains false or misleading information. If the Department denies an application for emergency monies, the applicant has thirty (30) days to contact the Civil Rights Director in writing to request a review of the decision. The applicant will be notified in writing of the Civil Rights Director's decision, which is final.

Statutory/Other Authority: ORS 147.380, ORS 147.005-147.463

Statutes/Other Implemented: ORS 147.380, ORS 147.005-147.463