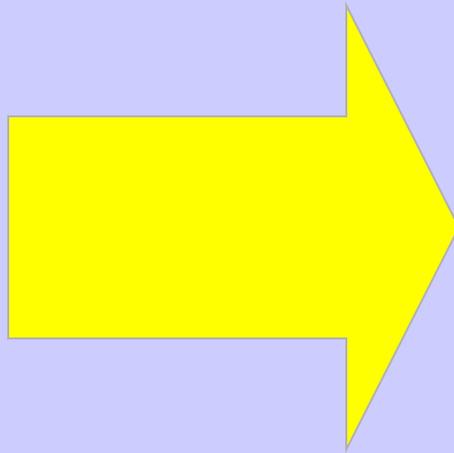




Daphne Felten-Green, Special Counsel

Office for Civil Rights
Office of Justice Programs
U.S. Department of Justice



Grants

Technical Support

Financial Assistance

Facilities

Training

The Office for Civil Rights Enforces

- **Title VI of the Civil Rights Act of 1964**
race, color, national origin
- **Program Statutes (Safe Streets Act, Victims of Crime Act, JJDPA)**
race, color, national origin, sex, religion, disability
- **Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 and ADA Amendments Act of 2008**
disability
- **Age Discrimination Act of 1975**
age in delivery of services
- **Title IX of the Education Amendments of 1972**
sex in educational programs

Who is subject to these laws?

- ◆ Any “PROGRAM or ACTIVITY” that DOJ funds
- ◆ Program or Activity means all of the operations of an organization receiving or substantially benefiting from financial assistance, e.g., a police department or department of corrections

Obligation of Recipients

A recipient must ensure not only its own compliance with applicable federal civil rights laws, but also the compliance of its

- **Subrecipients,**
- **Vendors, and**
- **Contractors.**

What are the four ways OJP Enforces Civil Rights compliance?

- ▶ **EEOP Reviews**
- ▶ **Investigation of Complaints**
- ▶ **Review of Findings of Discrimination**
- ▶ **Compliance Reviews**



OJP enforces civil rights laws relating to recipients'

- Employment Practices
- Delivery of Services

Obligations of Recipients (e.g. SAA) relative to civil rights

- ✓ A Recipient must comply with the civil rights requirements
 - ✓ Have written procedures for receiving discrimination complaints from both its own and its subrecipients' employees and beneficiaries
 - ✓ Complete an EEOP certification form (as applicable) and submit certification form or EEOP (if required) to the OCR
 - ✓ Provide notification to employees and beneficiaries that it does not discriminate on the basis of race, color, national origin, religion, sex, disability or age and that employees or beneficiaries can file a complaint with the recipient or the OCR
 - ✓ Submit to the OCR any Findings of Discrimination from a Court or Administrative agency within the previous three years
 - ✓ Have a 504 Coordinator if it meets the employee and funding threshold

Obligations of Recipients (e.g. SAAs) to Monitor Subrecipients

- ✓ A Recipient must also monitor its subrecipients' compliance with civil rights laws
 - ✓ Subrecipients must complete an EEOP Certification Form (as applicable) and submit certification form or EEOPs (if required) to the OCR and to the recipient
 - ✓ Subrecipient must provides notification to its employees or beneficiaries that the subrecipient does not discriminate and that employees and beneficiaries have a right to file a complaint with the recipient or the OCR
 - ✓ Subrecipient must submit to the OCR any Findings of Discrimination from a Court or Administrative agency within the previous three years, even if the subrecipient did not receive funding for that entire period. The recipient should maintain a copy of the Finding.
 - ✓ Subrecipient must have a 504 Coordinator if it meets the employee and funding threshold

Recommended Recipient procedures for handling discrimination complaints

- ✓ Handling **services** discrimination complaints involves three options:
 - ✓ investigation by the Recipient (e.g. SAA) and notifying the OCR of the investigation and outcome, OR
 - ✓ referring the complaint to the appropriate State or Federal agency for investigation and resolution while simultaneously notifying the OCR of the referral, OR
 - ✓ sending the complaint to the OCR for investigation
- ✓ Recipients should refer complaints involving **employment** discrimination to the appropriate State or Federal agency charged with investigating employment discrimination while simultaneously notifying the OCR of the referral

Protected Classes



Thinking about Services Discrimination

- ? Is there funding subject to Title VI, Section 504, the Safe Streets Act, or another Program Statute?
- ? Does the delivery of services involve a Protected Class?
- ? Is a Protected Class receiving unequal treatment?

Let's talk about a few of the protected classes to explore how this might look

Disability

- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in recipients of Federal funding
- Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability and applies to public and private entities, **whether or not** they receive Federal funding.
- American with Disabilities Act Amendment Act of 2008 – An Act to “restore the intent and protections of the ADA of 1990.” Congress found that definition of handicapped individual had not been interpreted consistently with Section 504.

Section 504 of the Rehabilitation Act of 1973 and ADA

Handicapped (disabled) person means any person who:

- has a physical or mental impairment which substantially limits (*prevents or severely restricts*) one or more major life activities
- has a record of such an impairment, or
- is regarded as having such an impairment

Disability Discrimination Analysis

- ADA requires recipients to provide reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability unless it can demonstrate it would be an undue hardship.
- Every case requires individualized analysis- individuals with disabilities are not a homogenous group even those with the same disability.

Section 504 of the Rehabilitation Act of 1973

Requires a recipient with 50 or more employees and receiving Federal financial assistance from the Justice Department of \$25,000 or more to:

- ➔ designate a Section 504 compliance coordinator
- ➔ adopt grievance procedures
- ➔ notify program participants, beneficiaries, applicants, employees, unions, organizations with collective bargaining agreements, that recipient does not discriminate on the basis of disability

Example:

- A shelter for abuse victims receives OJP funds.
- The shelter has a blanket policy that residents can not be taking any prescribed psychotropic medication while staying at the shelter
- IS THIS AN ACCEPTABLE POLICY?

ANSWER:

- NO!
- By having a blanket exclusionary policy, the shelter has discriminated against persons who may have a mental disability but that may be controlled by medication
- An individualized assessment must be done of the resident.

Religion

Definitions

**All aspects of religious practice
as well as belief**

42 USC 2000e(j)

**Includes sincerely held moral or
ethical beliefs**

29 CFR 1605.1

FAITH-BASED ORGANIZATIONS

- Government agencies must remove barriers for FBOs applying for aid
- Government agencies providing financial assistance must not discriminate either in favor of or against FBOs



When Faith-Based Organizations provide **services** to beneficiaries

DOJ Regulations state:

- FBOs must not use Federal funding to advance inherently religious activities; and
- FBOs may not discriminate against beneficiaries based on religion or religious belief

Are these practices acceptable?

- An atheist participant in a life skills training program run by a FBO subrecipient of a Dept of Corrections is required to participate in an opening prayer session before receiving the skills training.
- A woman seeking services at a local Non-Profit shelter for battered women is not allowed to pray her rosary in her room while she is a resident of the shelter.

The prior examples illustrate types of Discrimination in Services on the Basis of Religion

- The first would be an impermissible requirement to participate in religious exercises or program with faith content
- The second would be denial of access to religious services, pastoral counselor, special dietary needs, or items of a person's faith
- **BOTH PRACTICES ARE UNACCEPTABLE**



FBO Reg & Employment

- Funded FBOs do not forfeit Title VII's exemption from religious discrimination in employment.
- “Some Department programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. Accordingly, grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements.” 28 CFR 38.1(f) & 38.2(f)

Certificate of Exemption

- DOJ has determined that on a case-by-case basis, the Religious Freedom Restoration Act may allow Grantee FBOs to hire based on religion. An FBO must certify:
 - It will offer all federally-funded services to all qualified beneficiaries;
 - Inherently religious activities will be voluntary and kept separate from federally-funded activities; and
 - It is a religious organization that sincerely believes that abandoning its religious hiring practice in order to receive federal funding would substantially burden its religious exercise.

Do Non-Profit organizations need to have 501(c) (3) tax status to receive funding?

Answer: **NO***

* One Exception: non-profits funded under the Juvenile Justice and Delinquency Prevention Act



4 Ways for Applicants to Prove Nonprofit Status

- ▶ IRS recognizes as 501(c)(3)
- ▶ Statement from State taxing body or State Secretary of State certifying
 - (a) organization is nonprofit operating within State; and
 - (b) No part of the organization's net earnings may lawfully benefit any private shareholder or individual
- ▶ Certified copy of certificate of incorporation or similar document establishing nonprofit status
- ▶ Any of the above, if it applies to a State or national parent organization, with a statement by the State or parent organization that the applicant is a local nonprofit affiliate

National Origin Discrimination

Includes discrimination on the basis of Limited English Proficiency (LEP).

A Limited English Proficient (LEP) person has a first language other than English and a limited ability to read, speak, or understand English.

*To avoid
discrimination
against LEP persons,
recipients must*

- Take ***reasonable steps*** to ensure ***meaningful access*** to the programs, services, and information the recipients provide, ***free of charge***.
- Establish and implement ***policies and procedures*** for language assistance services that provide LEP persons with meaningful access.

What are reasonable steps?

Four Factor Analysis

- The ***number or proportion*** of LEP persons served or encountered in the eligible service population.
- The ***frequency*** with which LEP individuals come in contact with the program.
- The ***nature and importance*** of the program, activity, or service provided by the program.
- The ***resources*** available to the recipient.

What is meaningful access?

- On admission to a community shelter, a Spanish-speaking LEP victim of abuse needs to be interviewed.
- During educational programs, a Korean-speaking, LEP inmate requests to participate in a GED class.

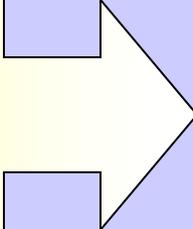
**What should the Shelter or Corrections personnel do to ensure meaningful access?
What resources can they use?**

Developing a Language Access Plan

- ★ Ensures consistent application of policies
- ★ Provides the basis for training employees on how best to serve LEP individuals
- ★ Informs LEP persons about available language access services

What are language services?

Provide
oral
language
services

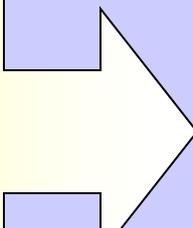


Ensure Interpreter Competency

Usually family members, friends, uncertified workers and other inmates are not appropriate.

and

Provide
translation
of written
materials



Safe Harbor Provision

If 5% or 1,000 (whichever is less) of population is LEP, **VITAL** documents must be translated

(However, if 5% represents fewer than 50, then written notice of free written translation upon request must be provided).

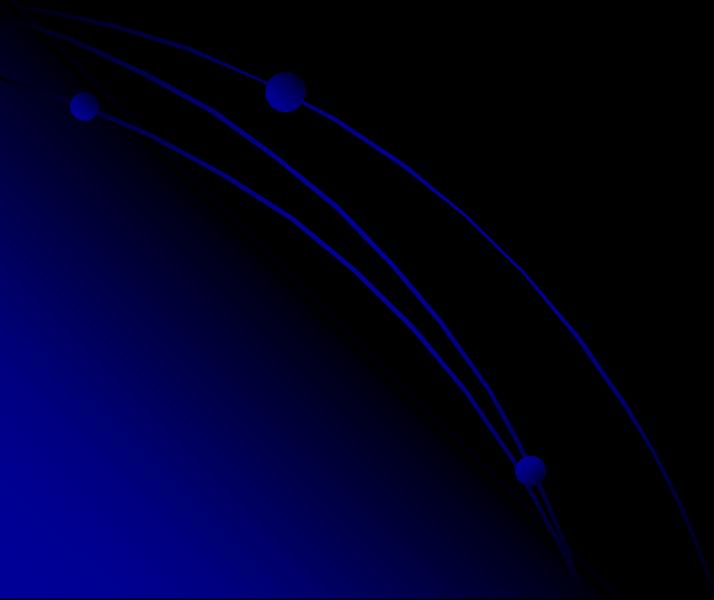
What should a written LEP Policy have?

Five Elements

- A process for identifying LEP persons who need language assistance
- Information about the available language assistance measures
- Training for staff
- Notice to LEP persons
- Monitoring and updating the LEP policy

No Retaliation

On what bases do recipients have to comply with the laws?

- Statute
 - Contract
 - Regulation
- 

Contract - Assurances

The applicant also specifically assures and certifies that

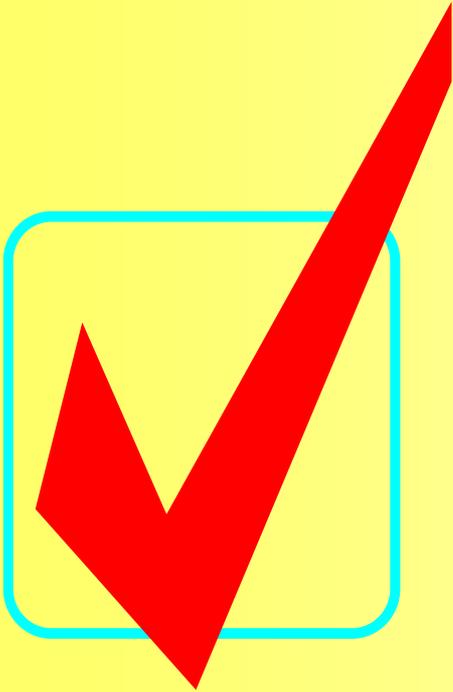
6. It will comply (**and will require any subgrantees or contractors to comply**) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789d); the Victims of Crime Act (42 U.S.C. 10604(e)) ; the Juvenile 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); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).

Regulation

- 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 ground 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, Office of Justice Programs.
- The recipient will provide an **EQUAL EMPLOYMENT OPPORTUNITY PROGRAM** if required to maintain one, where the application is for \$500,000 or more.

What is an EEOP?

- **Comprehensive document which analyzes:**
 - an agency's workforce in comparison to its relevant labor market data
 - all agency employment practices to determine their impact on the basis of race, sex, or national origin
- **A tool used to identify possible problem areas where discrimination may be occurring**



Does an agency have to prepare an EEOP?

Depends on

- Funding (Safe Streets Act, VOCA, or JJDPA)
- Status of Organization (*e.g.*, nonprofit)
- Amount of single award
- Number of employees

Entity Type	Number of Employees	Dollar Amount	Submit EEO to OCR	Preparation and/ or Certif. Required	Assurance Required	Send Findings
Educational, Medical, Nonprofit, or Indian Tribe	Does not matter	Does not matter	NO	YES Certifying the entity type	YES	YES
State or Local Govts. & For-Profit Orgs.	Does not matter	Less than \$25,000	NO	YES Certifying less than \$25,000	YES	YES
State or Local Govts. & For-Profit Orgs.	Less than 50	Does not matter	NO	YES Certifying less than 50 employees	YES	YES
State or Local Govts. & For-Profit Orgs.	50 or more	\$25,000 or more but less than \$500,000	NO	YES prepare and Certify EEO is on file for review	YES	YES
State or Local Govts. & For-Profit Orgs.	50 or more	\$500,000 or more for one grant	YES	NO	YES	YES

RESOURCES

- **Preparing an EEOP** Step-by-step instructions for preparing an EEOP Short Form online at www.ojp.usdoj.gov/ocr.
 - For technical assistance on EEOPs, contact Deborah Cooper, Equal Opportunity Assistant, at (202) 616-3208
- **LEP information:** www.lep.gov- Tips and Tools for different types of agencies on how to comply with requirements to provide services to LEP persons.
- **Disability information:** www.ada.gov- Disability Rights Section of USDOJ Civil Rights Division has many resources to assist recipients in understanding the requirements of the ADA and ADAAA.

Q & A

Self-Assessment



- What was one highlight from today's presentation on the application of civil rights laws to recipients of Federal financial assistance?
- What is one new piece of information that you will take back with you to your work?

Office for Civil Rights

(202) 307-0690

TTY (202) 307-2027

www.ojp.usdoj.gov/ocr