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# FEDERAL CIVIL RIGHTS COMPLIANCE FOR GRANTEES

OFFICE OF THE GOVERNOR

# LESSON PLAN

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# LESSON I

## Overview

# OVERVIEW

- 28 CFR Section 42 contains regulations which ensure that organizations that receive federal funding comply with federal civil rights laws.
- Every recipient of federal funds must provide written assurance to the grantor (e.g., a federal agency, or a State Administering Agency – the Office of the Governor, as applicable) that it has complied, and will comply, with these provisions.
- The Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice and the Office for Civil Rights and Civil Liberties (CRCL) at the Department for Homeland Security are charged with ensuring compliance with these laws.

# OVERVIEW

- OCR and CRCL recommend that subrecipients provide training to their employees regarding compliance with federal civil rights laws.
- The laws and regulations covered in this training apply to any program or activity that receives financial assistance from the Department of Justice or Department of Homeland Security.
- **Program or Activity** is interpreted broadly and means all of the operations of an organization receiving federal financial assistance, such as the entire department or office within a state or local government.

## LESSON 2

# Responsibilities of Subrecipients

# PROVIDE NOTICE OF NONDISCRIMINATION

- Subrecipients must provide notice to employees and beneficiaries (the recipients of the services and benefits that the subrecipients provides) that the subrecipient does not discriminate on the basis of: race, color, national origin, religion, age, disability, sex, sexual orientation\*, or gender identity\*.

\*Only protected classes for recipients of VAWA grants

- The notice must also provide that the subrecipient does not retaliate against the following individuals:
  - Persons who file discrimination complaints or lawsuits.
  - Persons who participate in discrimination proceedings as witnesses.

# TAKE REASONABLE STEPS TO PROVIDE MEANINGFUL ACCESS TO LEP PERSONS

- A Limited English Proficiency (LEP) person is a person who has a first language other than English and a limited ability to read, speak, write, or understand English.
- Subrecipients must take reasonable steps to ensure that LEP persons have meaningful access to the programs, services, and information they provide, free of charge.
- Subrecipients must establish and implement policies and procedures for language assistance services that provide LEP persons with meaningful access.



# TAKE REASONABLE STEPS TO PROVIDE MEANINGFUL ACCESS TO LEP PERSONS

- To determine what steps are reasonable, a Four Factor Analysis must be conducted which evaluates:
  - 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 number or proportion of LEP persons served or encountered in the eligible service population.
  - The resources available to the subrecipient.

# TAKE REASONABLE STEPS TO PROVIDE MEANINGFUL ACCESS TO LEP PERSONS

- Meaningful access includes:
  - Providing oral language services.
    - Family members, friends, and uncertified coworkers are not usually appropriate for this role.
  - Providing translation of written material.
    - Safe Harbor Provision. The following will be considered strong evidence of compliance: The subrecipient provides written translation of vital documents for each eligible LEP language group that constitutes 5% or 1,000 (whichever is less) of the population of persons eligible to be served or likely to be affected or encountered.

# TAKE REASONABLE STEPS TO PROVIDE MEANINGFUL ACCESS TO LEP PERSONS

- An LEP policy must contain:
  - A process for identifying LEP persons who need language assistance.
  - Information about the available assistance options for LEP persons.
  - Training for staff.
  - Notice to LEP persons.
  - A plan for monitoring and updating the LEP policy.

# SUBMIT FINDINGS OF DISCRIMINATION

- All subrecipients must submit any adverse findings of discrimination against their organization that occurred within the last three (3) years directly to the Office for Civil Rights at the Office of Justice Programs or the Office for Civil Rights and Civil Liberties (CRCL) at the Department for Homeland Security, as applicable.
- Adverse findings include findings by:
  - Federal Courts;
  - State Courts; and/or
  - Federal or State Administrative Agencies

# FORMULATE AN EEOP, IF REQUIRED

- An Equal Employment Opportunity Plan (EEOP) can be used to identify possible problem areas where discrimination may be occurring.
- Who needs to prepare and submit an EEOP to OCR depends on multiple factors, including:
  - Type of funding
    - Recipients of funding under the Safe Streets Act or Victims of Crime Act (VOCA)
    - U.S Department of Justice Grant Programs Covered by the Nondiscrimination Provision of the Omnibus Crime Control and Safe Streets Act of 1968. Note: this list of programs may not be complete.
  - Status of organization
    - Recipient is a state or local government agency or a private business; AND
    - Recipient has 50 or more employees; AND
    - Recipient has received a single award of \$25,000 or more

# FORMULATE AN EEOP, IF REQUIRED

- Who is exempt from preparing an EEOP:
  - A nonprofit organization, a medical or educational institution or an Indian Tribe; OR
  - Recipient with less than 50 employees; OR
  - Recipient who has received a single award for less than \$25,000.
- Recipients who are exempt from preparing an EEOP must certify that they are exempt using the online tool at <https://ojp.gov/about/ocr/eeop.htm>.
- Additional information can be accessed at: <https://www.ojp.gov/program/civil-rights/equal-employment-opportunity-plans>

# DESIGNATE A CIVIL RIGHTS COORDINATOR

- A subrecipient with 50 or more employees who receives federal financial assistance from the Department of Justice or Department of Homeland Security **with a combined total of \$25,000 or more** must:
  - Designate a Section 504 compliance coordinator for the subrecipient;
  - Adopt grievance procedures for the organization; and
  - Notify program participants, beneficiaries, applicants, employees, unions, and organizations with collective bargaining agreements that the recipient or subrecipient does not discriminate on the basis of disabilities.

# HAVE A WRITTEN GRIEVANCE POLICY

- Subrecipients must have written policies and procedures in place for notifying employees and beneficiaries on how to file a complaint alleging discrimination by the subrecipient.
- A subrecipient's written policy must include a procedure for sending all complaints to OCR/CRCL and/or the OOG.



# SIGN STANDARD ASSURANCES

- All subrecipients must certify to standard assurances that they will comply with all applicable federal civil rights laws and regulations.
  - Note: The standard assurances are included in the Grantee Standard Conditions and Responsibilities document located on the Award.Statement tab in the PSO's on-line grant management system (aka eGrants).
- These assurances are a prerequisite to, and requirement for, receiving any federal financial assistance.

# COMPLY WITH REGULATIONS FOR FAITH BASED ORGANIZATIONS

- Faith Based Organizations (FBOs) must not use direct federal funding to engage in explicitly religious activities.
  - Explicitly religious activities must be separate in time or location from federally-funded activities, and must be voluntary for those participating in the federally-funded activities.
- FBOs may not discriminate against beneficiaries based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate in a religious practice.

# COMPLY WITH REGULATIONS FOR FAITH BASED ORGANIZATIONS

- FBOs must give written notice to beneficiaries and prospective beneficiaries that:
  - FBOs will not discriminate on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate in a religious practice;
  - FBOs may not require beneficiaries to participate in any religious activities; and,
  - FBOs will separate in time or location any privately-funded religious activities from federally-funded activities.
  - If a beneficiary objects to the religious nature of an FBO, the FBO must undertake reasonable efforts to identify and refer the beneficiary to an alternate provider acceptable to the beneficiary.

# COMPLY WITH REGULATIONS FOR FAITH BASED ORGANIZATIONS

- FBOs must provide the required written notice to beneficiaries prior to the provision of services.
- FBOs do not forfeit Title VII's exemption from religious discrimination in employment.
- The DOJ has determined that on a case-by-case basis, the Religious Freedom Restoration Act may allow subrecipient FBOs to hire based on religion. An FBO seeking such an exemption must certify that:
  - It will offer all federally-funded services to all qualified beneficiaries;
  - Explicitly 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 to receive federal funding would substantially burden its religious exercise.

## LESSON 3

# Applicable Laws and Regulations

# WHAT LAWS DO OCR/CRCL ENFORCE?

- Federal civil rights laws. These are laws that apply to funding that comes from all federal agencies.
- OCR: Justice Department program regulations. These regulations are unique to the Department of Justice and apply to specific awards.
- CRCL: Department of Homeland Security regulations. These regulations are unique to the Department of Homeland Security and apply to specific awards.

# FEDERAL CIVIL RIGHTS LAWS

- Title VI of the Civil Rights Act of 1964 (*race, color, national origin*)
- Title VIII of the Civil Rights Act of 1968 (*race, color, national origin, religion, disability, sex*)
- Title IX of the Education Amendments of 1972 (*sex in educational programs*)
- Section 504 of the Rehabilitation Act of 1973 (*disability*)
- Age Discrimination Act of 1975 (*age*)
- Titles I, II, and III of the Americans with Disabilities Act of 1990 (*disability*)

# TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

– Title VI of the Civil Rights Act of 1964



# TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

- Title VI prohibits:
  - Providing a different level of services to individuals
  - Denying the opportunity to participate as a member of a planning or advisory board
  - Selecting the location of a facility with the purpose or effect of excluding individuals

# TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968

Title VIII (aka Fair Housing Act) forbids discrimination based on race, color, religion, sex, familial status (families with children under age 18), national origin, or handicap in the sale, rental, advertising, or financing of housing.

# TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]”

– Title IX of the Education Amendments of 1972

# TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

- Federally funded educational programs and activities must:
  - Appoint a Title IX coordinator;
  - Adopt grievance procedures; and
  - Notify interested parties that recipient does not discriminate on the basis of sex.

# SECTION 504 OF THE REHABILITATION ACT OF 1973

“No otherwise qualified individual with a disability in the United States, as defined in [29 U.S.C 705(20)], shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance[.]”

– Section 504 of the Rehabilitation Act of 1973

# SECTION 504 OF THE REHABILITATION ACT OF 1973

- A person with a disability means a person who:
  - Has a physical or mental impairment which substantially limits one or more major life activities;
  - Has a record of such an impairment; or,
  - Is regarded as having such an impairment.

# AGE DISCRIMINATION ACT OF 1975

“[N]o person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.”

– Age Discrimination Act of 1975

# TITLES I, II, AND III OF THE AMERICANS WITH DISABILITIES ACT OF 1990

**Title I** prohibits private employers, state and local governments, employment agencies and labor unions with 15 or more employees from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

**Title II** applies to public entities with 50 or more employees whether or not they receive federal funding and prohibits discrimination against qualified individuals on the basis of disability. Must designate a disability coordinator and adopt grievance procedures.

**Title III** prohibits discrimination on the basis of disability in the activities of places of public accommodations and requires newly constructed or altered places of public accommodation, as well as commercial facilities, to comply with ADA standards.



# PROGRAM-SPECIFIC STATUTES

- Program-specific statutes apply only to recipients of particular types of funding from the DOJ or DHS. Examples include:
- Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act)
- Victims of Crime Act (VOCA)
- Violence Against Women Act (VAWA)

# SAFE STREETS ACT

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

– Safe Streets Act

# VICTIMS OF CRIME ACT (VOCA)

“No person shall on the ground of race, color, religion, national origin, handicap, or sex, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this subchapter.”

–Victims of Crime Act (VOCA)

# VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013

“No person in the United States shall on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds appropriated for grants, cooperative agreements, and other assistance administered by the Office on Violence Against Women.”

–VAWA Reauthorization Act of 2013

# VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013

- By law, any award administered by OVW is made subject to these conditions
- Exception
  - If sex segregation or sex-specific programming is necessary to the essential operation of a program, nothing in this paragraph shall prevent any such program or activity from consideration of an individual's sex
  - In such circumstances, subrecipients may meet the nondiscrimination requirements by providing comparable services to individuals who cannot be provided with the sex-segregated or sex-specific programming.
- OCR provided FAQs on the VAWA nondiscrimination provision at:  
<https://www.justice.gov/archives/ovw/file/29386/download>

## LESSON 4

# **Consideration of Arrest and Conviction Records in Employment Decisions**

# GUIDANCE FROM OCR

- In 2012, the U.S. Equal Employment Opportunity Commission (EEOC) issued updated guidance cautioning employers that the use of arrest or conviction information in making employment decisions may, in certain circumstances, violate Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, national origin, and other protected classes.
- Recipients should consult their legal counsel and the EEOC Enforcement Guidance for assistance in making employment decisions based on arrest and conviction records.

# GUIDANCE FROM OCR

- EEOC Enforcement Guidance does not prohibit employers from conducting background checks.
- It provides a useful framework for employers and their legal counsel to evaluate prospective and current employees' arrest or conviction records.
- Guidance may be found at: [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)



## LESSON 5

# Compliance with Laws and Investigations

# COMPLIANCE – 28 C.F.R. §42.106 (DOJ)

- The OOG is responsible for compliance with these regulations and seeks cooperation from subrecipients and may offer assistance where needed to help subrecipients comply voluntarily.
- The OOG is required to keep records and submit compliance reports, as deemed necessary by DOJ, which provide racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.
  - Subrecipients are required to submit compliance reports, as deemed necessary, to the OOG to enable the OOG to carry out its responsibilities under §42.106.

# INVESTIGATIONS – 28 C.F.R. §42.107 (DOJ)

- If an employee or beneficiary of a subrecipient believes that a subrecipient has discriminated against him or her, that individual may file a complaint of discrimination with the subrecipient, the OOG, or the OCR/CRCL as appropriate.
- Complaints must generally be filed within 180 days of the alleged discrimination, or within one year of the alleged crime for allegations under the Omnibus Crime Control and Safe Streets Act, the Victims of Crime Act, or the Violence Against Women Act.





# JUDICIAL REVIEW – 28 C.F.R. §42.111 (DOJ)

- All decisions under 28 C.F.R §42.108 that adversely affect a subrecipient are subject to judicial review in a court of competent jurisdiction pursuant to 28 C.F.R. §42.111.

# LESSON 6

## Resources

# RESOURCES

- **DOJ/OCR Online Training:** Access the website for training addressing a variety of civil rights topics. 
- **DOJ/OCR Civil Rights Information:** Link to DOJ's Civil Rights website. 
- **LEP Information:** Tips and tools for compliance with requirements to provide services to LEP persons. 
- **Preparing a DOJ/EEOP:** Instructions for preparing an EEOP Short Form online. 
- **DHS/CRCL Civil Rights Information:** Link to DHS's Civil Rights and Civil Liberties website. 