

# **Subrecipient Civil Rights Compliance Training**

**Department of Law and Public Safety  
Legal Affairs and Employee Relations**



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# Purpose

- The New Jersey Department of Law and Public Safety (Department) acts as the State Administering Agency (SAA) for certain United States grants, including the Department of Justice (DOJ).
- For recipients of DOJ funding, the acceptance of funds from DOJ grants creates an obligation to adhere to applicable federal civil rights laws. These laws are enforced by the DOJ Office of Justice Programs (OJP), Office for Civil Rights (OCR).
- For all grantees, the Department will ensure that its subrecipients comply with all applicable federal laws regarding employment discrimination.
- It is the responsibility of the SAA to ensure that its grant subrecipients are complying with these applicable federal civil rights laws.
- This presentation acts as the Department's civil rights training for subrecipients. The training provides summary information on the statutes and regulations that subrecipients are required to abide by as a condition of their grant award. This training is required to be completed once per grant award.
- When you have concluded the training, print and fill out the final slide, the Certificate of Completion, and retain it in your grant files.

# The Office for Civil Rights Enforces:

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

# Assurances

The applicant also specifically assures and certifies that:

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); see Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).

# No Retaliation

- 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.

# These Nondiscrimination Requirements Include:

- For recipients of DOJ funding, in the event a Federal or State court or Federal or SAA 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 OJP OCR.
- The recipient will provide an EQUAL EMPLOYMENT OPPORTUNITY PLAN if required to maintain one, where the application is for \$500,000 or more.

# Protected Classes

Race

Color

National

origin

Religion

Sex

Disability

Age

# **Title VI**

## **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 the benefits of, or be subjected to discrimination under any **program or activity** receiving Federal financial assistance.

# Title VI

- Covers both **intentional** discrimination, as well as recipient **practices** that have the effect of discrimination.
- If a recipient is found to have discriminated and voluntary compliance cannot be achieved, the funding may be terminated OR the matter referred to the DOJ.

# Title VI Prohibits

- Providing **different** services to individuals
- Denying the opportunity to participate as a member of a **planning or advisory body**
- Selecting the **location of a facility** with the **purpose or effect of** excluding individuals

# **Under Title VI, MUST NOT:**

- Deny an individual any service, financial aid, or other benefit provided under your program
- Subject an individual to segregation or separate treatment in any matter related to his/her receipt of any service, financial aid or other benefit under the program

# Omnibus Crime Control and Safe Streets Act of 1968

(OJP Program Statute)

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.

# Victims of Crime Act

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 chapter.

# **Section 504 of the Rehabilitation Act of 1973**

- Prohibits discrimination against qualified individuals on the basis of disability in the delivery of services and employment practices in certain Federally funded programs or activities

# Section 504 of the Rehabilitation Act of 1973

Handicapped person means any person who:

- has a physical or mental impairment which substantially limits one or more major life activities, OR
- has a record of such an impairment, OR
- is regarded as having such an impairment

# Section 504 of the Rehabilitation Act of 1973

A recipient with 50 or more employees and receiving Federal financial assistance from the DOJ of \$25,000 or more must:

- 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

# **Title II of the Americans with Disabilities Act (ADA)**

- Prohibits discrimination on the basis of disability for participation in all services, programs, and activities provided to the public by State and local governments (exception – public transportation services)
- Title II extends prohibition of discrimination in federally assisted programs established by Section 504

# What is a disability under ADA?

(Same as defined in Section 504 of the Rehabilitation Act of 1973)

Disability means any person who:

- has a physical or mental impairment which substantially limits one or more major life activities, OR
- has a history or record of such an impairment, OR
- is perceived by others as having such an impairment

# Title II of ADA

- Each program, service or activity must be operated so that it is **readily accessible to** and **usable by** individuals with disabilities unless it would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens

# Title II of ADA

- Complaints can be filed with:
  - The Department's ADA Coordinator
  - The appropriate federal agency
  - Private lawsuit
  
- Courts may order public entities to make facilities accessible, provide auxiliary aids or services, modify policies, and pay attorney's fees

# ADA & 504 Resources

- The ADA Technical Assistance Program provides direct, free information and technical assistance
- Comprehensive Website ([www.ada.gov](http://www.ada.gov))
- Toll-Free Information Line: Voice 800-414-0301; TTY 800-514-0383
- Outreach Initiatives
- Technical Assistance Resources

# Age Discrimination Act of 1975

- Prohibits discrimination on the basis of age in the delivery of services in certain Federally funded programs or activities.
- Applies to persons of all ages, but does not cover employment discrimination (which is covered by the Age Discrimination in Employment Act)

# Title IX of the Education Amendments of 1972

- Prohibits discrimination on basis of **sex** in OJP funded training or educational programs
- Applies to not only traditional educational institutions (colleges/universities), but also to any training or education program operated by a recipient of federal funds.

# **Safe Streets Act, JJDPDA, & VOCA**

Prohibit discrimination in:

**Employment Practices**

**&**

**Delivery of Services**

# Thinking about services discrimination:

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

Example:

A State agency receives OJP funds.

The State agency has an office open to the public only accessible by climbing three flights of stairs.

Disabled citizens do not receive the same access as others to State services.

# 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

# Information regarding Faith-Based Organizations (FBOs)

- Government agencies must remove barriers for FBOs applying for funding
- Government agencies providing funding must not discriminate for or against the FBOs
- Prepare for FBO questions in on-site and desk audits

# DOJ Regulations issued for FBO guidance, January 2004

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

# FBO Regulations & Employment

- Funded FBOs do not forfeit Title VII's exemption from religious discrimination in employment.

BUT

- “Some [DOJ] 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 [DOJ] 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 FBO's 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.

# Non-Profit Applicant Information

- Applicants for the Juvenile Justice and Delinquency Prevention Act (JJDP) grants, non-profit organizations **must** have documentation of Federal 501(c)(3) status
- **All other non-profit applicants** may prove their non-profit status in the following ways:
  - May show 501(c)(3) status
  - May provide a statement from the State certifying
    - The organization is a non-profit organization operating within the State
    - No part of its net earnings may lawfully benefit any private shareholder or individual
  - May provide a certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the non-profit status of the applicant
  - May provide any item described in 28 C.F.R. 38.1(b)(1)-(3) or 28 C.F.R. 38.2(b)(1)-(3) together with a statement by the State that the applicant is a local non-profit affiliate

**L**imited  
**E**nglish  
**P**roficiency

# 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**

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

# What are language services?

Provide  
oral  
language  
services

and

Provide  
translation  
of written  
materials

## Ensure Interpreter Competency

Usually family members, friends, and uncertified co-workers are not appropriate.

## 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**

1. A process for identifying LEP persons who need language assistance
2. Information about the available language assistance measures
3. Training for staff
4. Notice to LEP persons
5. Monitoring and updating the LEP policy

# For More Information On LEP Programs:

Visit:

<http://www.lep.gov/index.htm>

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

<u>Entity Type</u>	<u>Number of Employees</u>	<u>Dollar Amount</u>	<u>Submit EEOP to OCR</u>	<u>Preparation and/ or Certif. Required</u>	<u>Assurance Required</u>	<u>Send Findings</u>
Educational, Medical, Nonprofit, or Indian Tribe	Does not matter	Does not matter	NO	NO	YES	YES
State or Local Govts. & For-Profit Orgs.	Does not matter	Less than \$25,000	NO	NO	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	More than \$25,000 & less than \$500,000	NO	YES prepare and Certify EEOP 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

# Preparing an EEOP

- Step-by-step instructions for preparing an EEOP Short Form online at [\*\*www.ojp.usdoj.gov/ocr\*\*](http://www.ojp.usdoj.gov/ocr)

# What does the Department need from you?

1. Ensure that your employees, clients, customers, and program participants are provided with access to this training.
2. Notify your employees of what to do if they receive a complaint alleging discrimination.
3. Have internal procedures in place if an employee, client, customer, or program participant has a complaint alleging discrimination.
4. During a monitoring visit, whether on-site or desk audit, the Department will utilize a checklist to determine each subrecipients level of compliance with federal civil rights laws. Be prepared for this monitoring.

# Subrecipient Internal Complaint Procedures

- Subrecipients should have internal procedures in place for responding to discrimination complaints from employees, clients, customers, or program participants, including:
  - Reporting the complaint to a Complaint Coordinator
  - Referring the complaint to the Office for Civil Rights and/or Equal Employment Opportunity Commission
  - Contacting the Department if a complaint is referred
- ▶ Sub-recipients should also provide notice of these procedures to their employees, clients, customers, or program participants by posting the policies in public places and/or including them in their program manuals and materials

# Who to Contact If You Receive A Discrimination Complaint or Potential Discrimination Complaint

- **For Complaints From Employees of the Department:**
  - The Complaint Coordinator is the Department EEO/AA Officer.
- **Complaints From Clients, Customers, or Program Participants of the Department:**
  - The Complaint Coordinator is the Director of the Legal Affairs and Employee Relations Section, Office of the Attorney General.
- **Complaints From Employees, Clients, Customers, or Program Participants of a Subrecipient:**
  - The Complaint Coordinator is the Director of the Legal Affairs and Employee Relations Section, Office of the Attorney General.
- **All Complainants are able to file a claim directly with the Office for Civil Rights:**
  - Office for Civil Rights, Office of Justice Programs,  
U.S. Department of Justice  
810 Seventh Street N.W.  
Washington, DC 20531

# Complaint Coordinator Contact Information

- EEO/AA Officer  
Office of Equal Employment Opportunity  
PO Box 080  
Trenton, New Jersey 08625-0080  
609-633-2345
- Director of Legal Affairs and Employee Relations  
Complaint Coordinator, OCR Grant-Funded Programs  
Office of the Attorney General  
Justice Complex-PO Box 081  
Trenton, New Jersey 08625  
609-984-6998

**For Additional Information:  
Office for Civil Rights  
Office of Justice Programs**

**(202) 307-0690**

**TTY (202) 307-2027**

**[www.ojp.usdoj.gov/ocr](http://www.ojp.usdoj.gov/ocr)**

# Certificate of Completion

- I certify I have reviewed the New Jersey Subrecipient Civil Rights Compliance Training regarding federal grant funded projects, policies, and the legal sources that prohibit discrimination
- Subgrant Award Number: \_\_\_\_\_
- Project Director  
or Designee: \_\_\_\_\_  
Print  
\_\_\_\_\_  
Signature Date