

# NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

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Adapted from a presentation by:

Christopher Zubowicz, Attorney Advisor

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

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- ❑ The Office of Justice Programs (OJP) is the grant making arm of the justice Department. The Office for Civil Rights (OCR) is responsible for enforcing civil rights laws connected to OJP financial assistance.
  - ❑ When federal financial assistance is provided, in any way, the recipients and sub-recipients must be aware of and comply with civil rights requirements.



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Civil Rights  
Obligations

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- ❑ This presentation provides a great deal of useful information about civil rights laws and their application to Federal grantees.
  - ❑ When all is said and done, everyone should learn this one simple concept whenever Federal funds are involved, there are civil rights requirements that have to follow.

**Grants**

**Technical Support**

**Financial Assistance**

**Facilities**

**Training**

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- ❑ When we think of Federal financial assistance, we often think just about dollars--grants that various organizations receive, in this case, from the Department of Justice.
  - ❑ However, Federal financial assistance can include things other than money. Asking a Federal agency for technical assistance is also Federal financial assistance (e.g., when a local police department asks the FBI lab for analysis of crime evidence).
  - ❑ Financial Assistance can include training or education programs that the Federal government supplies (e.g., training to police administrators at the Quantico FBI academy). Financial assistance may take the form of facilities purchased or used with Federal funds (e.g., a prison constructed with Federal funds continues to be Federal financial assistance during all the years it is used for that purpose).

# OJP ENFORCES CIVIL RIGHTS LAWS RELATING TO RECIPIENTS'

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- ❑ Employment Practices
- ❑ Delivery of Services

# WHO IS SUBJECT TO THESE LAWS?

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- ❑ 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

# ON WHAT BASIS DO RECIPIENTS HAVE TO COMPLY WITH THE LAWS?

- Statute
- Contract
- Regulation

# THE OFFICE OF 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*

- **Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990**

*\*\*\*disability*

- **Age Discrimination Act of 1976**

*\*\*\*age in delivery of services*

- **Title IX of the Education Amendments of 1972**

*\*\*\*sex in educational programs*

# Protected Classes



**No Retaliation**

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- ❑ The Safe Streets Act, following the standards of Title VII of the Civil Rights Act of 1964, provides protection against being retaliated for opposing discriminatory practices in employment. That is, if a person files an employment discrimination complaint, regardless of its merits, an employer cannot retaliate against the employee who filed the complaint. The same protections are available for service discrimination complaints under Title VI (28 C.F.R. 42.207(e)). Retaliation claims are often easier to prove than the underlying discrimination claims.

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

# REGULATION

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- ❑ 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.

# DISABILITY

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## 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.

# SECTION 504 OF THE REHABILITATION ACT OF 1973 AND ADA

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Handicapped (disabled) person means any 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.

# SECTION 504 OF THE REHABILITATION ACT OF 1973

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- ❑ 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 OF SERVICES DISCRIMINATION BASED ON DISABILITY

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- ❑ A shelter for abuse victims receives OJP funds.
- ❑ The shelter has a blanket policy that residents cannot be taking any prescribed psychotropic medication while staying at the shelter.
- ❑ 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.

# RELIGION

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## 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**

# TYPES OF SERVICES DISCRIMINATION BASED ON RELIGION

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- ❑ Denial of access to religious services, pastoral counselor, special dietary needs or items of a person's faith
- ❑ Requirement to participate in religious exercises or program with faith content

# HOW DOES OJP ENFORCE CIVIL RIGHTS?

- ❑ EEOP Reviews
- ❑ Investigation of Complaints
- ❑ Review of findings of Discrimination
- ❑ Compliance Reviews



# 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.**

# 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

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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

# FBO REGULATIONS & 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 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 FBOs need to have 501(c) (3) tax status to receive funding?**

**Answer: NO\***

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**\* One Exception: nonprofits funded under the Juvenile Justice and Delinquency Prevention Act**

# 4 WAYS FOR APPLICANT FBOS TO PROVE NONPROFIT STATUS

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- ❑ 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, write, 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 is interviewed in English (without interpretation)
- ❑ During educational programs, a Korean-speaking, LEP inmate sits through classes all conducted in English (without interpretation)

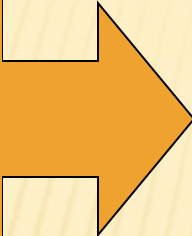
***Have these persons been afforded meaningful access?***

# 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

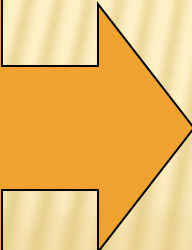


## Ensure Interpreter Competency

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

# 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?

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

# PREPARING AN EEOP

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- ❑ Step-by-step instructions for preparing an EEOP Short Form online at [www.ojp.usdoj.gov/ocr](http://www.ojp.usdoj.gov/ocr).
- ❑ For technical assistance, contact Deborah Cooper, Equal Opportunity Assistant, at (202) 616-3208

# **OFFICE FOR CIVIL RIGHTS**

**(202) 307-0690**

**TTY (202) 307-2027**

**[WWW.OJP.USDOJ.GOV/OCR](http://WWW.OJP.USDOJ.GOV/OCR)**