

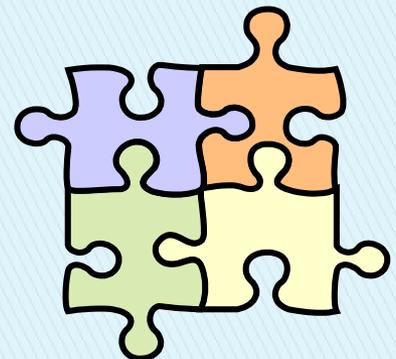
Federal Civil Rights Compliance for Grantees

May 15, 2018



C.F.R. Regulations

- ▶ 28 C.F.R. section 42 provides the regulations surrounding how organizations like ICJI issue grants to grantees.
- ▶ Every recipient of federal \$\$ must provide a written assurance to the grantor that it has or will comply with these provisions.



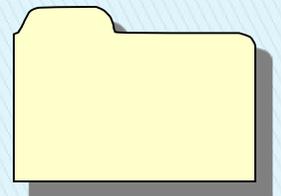
Compliance - (28 C.F.R 42.106)

- ▶ ICJI must seek compliance from grantees and may offer assistance where needed.
- ▶ ICJI required to keep compliance report.
- ▶ Must allow grantees access to the report.



Investigations (28 C.F.R. 42.107)

- ▶ ICJI required to conduct compliance spot checks on all grantees at a time to be determined by ICJI.
- ▶ Any grantee alleging discrimination may file a request for investigation with ICJI not later than 180 days following the alleged incident (or 1 year for allegations under the Safe Streets Act).
- ▶ If violations are found, ICJI encouraged to work through the matter with the grantee on an informal basis.
- ▶ Formal appeal can still be requested.



Compliance continued

(28 C.F.R. 42.108)

- ▶ ICJI has power to withhold funds if discrimination does not stop.
- ▶ Formal notice must be given before \$\$ may be withheld.
- ▶ Hearing must be held and finding must be made that grantee is not in compliance.



Judicial Review

(29 C.F.R 42.111)

- ▶ All decisions are subject to judicial review.



Federal Civil Rights Laws

- Title VI of the Civil Rights Act of 1964 (*race, color, national origin*)
- 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*)
- Program Statutes (e.g. Safe Streets Act, VOCA, JJDPA, VAWA) (*race, color, national origin, sex, religion, disability, sexual orientation, gender identity*)

Protected Classes

- ▶ Race
- ▶ Color
- ▶ National Origin
- ▶ Religion
- ▶ Sex
- ▶ Disability
- ▶ Age
- ▶ Sexual Orientation
- ▶ Gender Identity

Who/What is subject to these laws?

- ▶ Any “PROGRAM OR ACTIVITY” that receives financial assistance from the DOJ.
- ▶ Program or activity means all of the operations or an organization receiving federal financial assistance, such as the entire department or office within a state or local government.

Types of Prohibited Discrimination

- ▶ Employment practices
 - Ex. Hiring or firing based on race of individual
- ▶ Delivery of Services
 - Ex. A domestic violence clinic has a policy of only providing services to female victims of domestic violence, and not male victims.

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.
- ▶ 34 U.S.C. § 20110(e)

VAWA 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 (as defined in paragraph 249(c)(4) of Title 18, U.S.C.), sexual orientation, or disability, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under [VAWA], and any other 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 – Continued

- ▶ 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, grantees may meet the requirements of this paragraph by providing **comparable services** to individuals who cannot be provided with the sex-segregated or sex-specific programming.
- ▶ 34 U.S.C. § 12291(b)(13)
- ▶ *The Office for Civil Rights has posted FAQs on the VAWA nondiscrimination provision at <http://ojp.gov/about/ocr/pdfs/vawafaqs.pdf>*

Disability Discrimination

- ▶ **Section 504 of the Rehabilitation Act of 1973** prohibits discrimination on the basis of disability by recipients of federal funding.
- ▶ **Title II of the Americans with Disabilities Act of 1990** prohibits discrimination on the basis of disability and applies to public 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 the definition of “handicapped individual” had not been interpreted consistently with Section 504.

Definition: Disability

- ▶ Under Section 504 and Title II of the ADA, a disabled person is 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

Analyzing a Disability Discrimination Claim

- ▶ Must provide reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability unless a recipient can demonstrate it would be an undue hardship or would fundamentally alter the service or activity.
- ▶ Each case requires individualized analysis – individuals with disabilities are not a homogenous group.

Section 504 of the Rehabilitation Act of 1973

- ▶ A recipient with **50 or more** employees and receiving federal financial assistance from the Justice Department 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

Discrimination based on Religion

- ▶ For purposes of federal civil rights law, “religion” includes:
 - All aspects of religious practice as well as belief
 - 42 USC 2000e(j)
 - Sincerely held moral or ethical beliefs
 - 29 CFR 1605.1

Faith-Based Organizations

- ▶ Government agencies must remove barriers for Faith-Based Organizations (FBO) applying for aid.
- ▶ Government agencies providing financial assistance must not discriminate either in favor of or against FBOs.

DOJ Regulations for FBO Guidance

- ▶ 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.

Notice and Referral Requirements for FBOs

- ▶ 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;
 - FBOs will separate in time or location any privately-funded religious activities from federally-funded activities; and

Notice and Referral Requirements for FBOs (cont.)

- ▶ If a beneficiary objects to the religious character of the FBO, the FBO will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider that is acceptable to the beneficiary.
 - Within reasonable geographical proximity
 - Services comparable in substance and quality
 - A record of the referral must be kept

Notice and Referral Requirements for FBOs (cont.)

- ▶ FBO must provide written notice prior to provision of services
- ▶ Sample notice is contained at Appendix A to 28 C.F.R. part 38
- ▶ Sample beneficiary referral request is contained at Appendix B to 28 C.F.R. part 38.

FBO Regulations and Employment

- ▶ 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 38.5(e)

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;
 - 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 in order to receive federal funding would substantially burden its religious exercise.

National Origin Discrimination

- ▶ Includes discrimination on the basis of Limited English Proficiency (LEP).
 - LEP person has first language other than English and limited ability to read, speak, write, or understand English.

Avoiding Discrimination against LEP Persons

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

Language Services

- ▶ Provide oral language services
 - Usually family members, friends, and uncertified co-workers are not appropriate for this role.
- ▶ 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.*

5 Elements for an LEP Policy

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

OJP's Civil Rights Enforcement

- ▶ EEOPs (Equal Employment Opportunity Plans)
- ▶ Complaints
- ▶ Findings
- ▶ Compliance Reviews

What is an EEOC?

- ▶ A 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

Who needs 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

Who needs to prepare an EEOP?

If	Then Does the recipient need to submit a Certification Form to OCR?	Does the recipient need to develop an EEOP?	Must the recipient submit an EEOP Utilization Report to OCR?
Recipient is a Medical or Educational Institution, Indian Tribe, or Nonprofit	YES	NO	NO
Largest individual grant received is less than \$25,000	YES	NO	NO
Recipient has less than 50 employees	YES	NO	NO
None of the above	YES	YES	YES

Resources

▶ Preparing an EEOP

- Step-by-step instructions for preparing an EEOP Short Form online at <https://ojp.gov/about/ocr/eeop.htm>

▶ 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 DOJ's Civil Rights Division has many resources to assist recipients in understanding the requirements of the ADA.

▶ OCR Online Training

- OCR has posted training presentations on its website addressing a variety of civil rights topics.
www.ojp.usdoj.gov/about/ocr/assistance.htm

Questions?

