

Civil Rights: How you can help.

South Carolina Department of Public Safety
Office of Highway Safety and
Justice Programs



This presentation was prepared by the Office of Highway Safety and Justice Programs in the South Carolina Department of Public Safety to provide information to employees and subrecipients concerning their civil rights responsibilities. Upon acceptance of federal funds, subrecipients are required to comply with federal civil rights laws. We also hope this will be a useful tool in the successful administration of your agency's mission.

Obligations of State Administering Agencies

- It is the obligation of a State Administering Agency--in South Carolina it is the South Carolina Department of Public Safety-- to ensure that its subgrantees comply with all applicable federal civil rights laws.
- The federal Office for Civil Rights ensures that the SAA complies with the very same laws.

The Office for Civil Rights Enforces

- Title VI of the Civil Rights Act of 1964 (*re: race, color, national origin*)
- Section 504 of the Rehabilitation Act of 1973 (*re: disabilities*)
- Title II of the Americans with Disabilities Act of 1990 (*re: disabilities*)
- Age Discrimination Act of 1975 (*re: age*)
- Title IX of the Education Amendments of 1972 (*sex discrimination in educational programs*)
- Exec. Order 13559, Partnerships with Faith-Based Organizations (*re: religion*)
- Individual Program Statutes (e.g. Safe Streets Act, Victims of Crime Act, JJDPA) (*re: race, color, national origin, sex, religion, disability*)

Protection for Employees

- Retaliation against an employee for opposing an unlawful employment practice or participating in an investigation, proceeding, or hearing under the following statutes is *prohibited*:
 - Title VI of the Civil Rights Act
 - The Americans With Disabilities Act
 - The Omnibus Crime Control and Safe Streets Act
 - Title IX of the Education Amendments
 - The Rehabilitation Act
 - The Age Discrimination Act

Protection for Employees

- As long as an employee had a reasonable and good faith belief that the employer's conduct was illegal, even if the employee turns out to be wrong, the employee is protected.
- However, if the way the individual chooses to protest perceived discrimination is unreasonable or if the opposition is false and malicious, the anti-retaliation provisions will not apply.

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.

Defining a “program or activity”

- A program or activity is the whole organization that receives federal funding – generally the entire department or office within a state or local government.
- Examples:
 - If a division of the Department of Public Safety receives a grant, the entire Department of Public Safety is covered.
 - If a section of a county sheriff's department receives federal funds, the entire sheriff's department is covered, but not the other departments in the county government.
 - If a state Department of Corrections receives funding, and then sub-awards the funding to local agencies or organizations, all of the operations of the Department of Corrections are covered, along with the operations of the local sub-recipients.

Title VI Prohibitions

- 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

Examples of Title VI discrimination

- A county sheriff's department that is partially federally funded stops mostly Hispanic motorists traveling on a particular road, but does not stop African-American motorists.
- A federally-funded police department takes longer to respond to calls from a largely African-American neighborhood than to calls from a largely Caucasian neighborhood, or vice versa.
- A state planning agency, in a state with a large Native American population, convenes an advisory committee to provide recommendations on what programs to implement with federal funds without including a representative from the Native American population.

Omnibus Crime Control and Safe Streets Act of 1968 (OJP Programs)

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 & JJDPA

- Both programs prohibit discrimination in
 - Employment Practices
 - Delivery of Services

Examples of Delivery of Services

Discrimination

- A federally-funded domestic violence clinic has a blanket policy of only providing services to female victims of domestic violence, and not male victims.
- A federally-funded correctional institution fails to take reasonable steps to provide an inmate with requested religious services, items of the inmate's faith, or special dietary accommodations.

Rehabilitation Act of 1973 (Section 504) Prohibitions

- No otherwise qualified individual with a disability in the United States, as defined in section 705 (20) of this title, 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 or under any program or activity conducted by any Executive agency or by the United States Postal Service.

Americans with Disabilities Act of 1990 (Title II)

- Title II prohibits discrimination by state and local government agencies. This Title covers all public agencies regardless of whether they receive federal assistance. This Title guarantees access to all programs, services, and activities provided by a public agency, including public education, employment, recreation, health care, social services, courts, voting, and town meetings. State and local government-funded colleges and universities and other post-secondary educational programs must not discriminate under Title II.

Section 504 and Title II of the ADA Definitions

A 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 Requirements

- A recipient with 50 or more employees and which receives Federal financial assistance from the Justice Department of \$25,000 or more must:
 - designate a Section 504 compliance coordinator
 - SCDPS Section 504 compliance coordinator is
 - Phil Riley, OHSJP Director 803-896-9970
 - adopt grievance procedures
 - notify program participants, beneficiaries, applicants, employees, unions, and organizations with collective bargaining agreements, that recipient does not discriminate on the basis of disability

Example of services discrimination based on disability

- A federally-funded domestic violence 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 discriminates against persons who have a mental disability that may be controlled by medication, and who are qualified to receive services.

To learn more:

- The ADA Technical Assistance Program provides direct, free information and technical assistance:
 - Comprehensive Website (www.ada.gov)
 - Toll-Free Information Line
 - Voice 800-514-0301; TTY 800-514-0383
 - Outreach Initiatives
 - Technical Assistance Resources for both ADA and Section 504 to make your services better and more accessible

Ensuring Equitable Services

- Is the funding subject to Title VI, Section 504, Safe Streets Act, or other Program statutes?
- Is the entity covered under the ADA?
- Does the delivery of services involve one or more protected classes?
- Is a protected class receiving unequal treatment?
- Are services provided to everyone, in an equal manner?

Contract

The applicant 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 (34 U.S.C. 10228c & 10221a); the Juvenile Justice and Delinquency Prevention Act of 2002 (34 U.S.C. 11182b); the Civil Rights Act of 1964 (42 U.S.C. 2000d); the Indian Civil Rights Act (25 U.S.C. 1301-1303); 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). It will also comply with Ex. Order 13279 Equal Protection of the Laws for Faith-Based and Community Organizations; Ex. Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations; and the DOJ implementing regulations at 28 C.F.R. Part 38.

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 Federal Office for Civil Rights, Office of Justice Programs.
- The recipient will provide an **EQUAL EMPLOYMENT OPPORTUNITY PLAN if required to maintain one**, where the application is for \$25,000 or more.

Federal Office of Justice Programs

Civil Rights Enforcement

- Equal Employment Opportunity Plans (EEOP)
- Complaints
- Findings
- Compliance Reviews

State Administering Agency (in SC this is SCDPS) Civil Rights Obligations

- A State Administering Agency must comply with civil rights requirements in the following manner:
 - Have written procedures for receiving discrimination complaints from employees and beneficiaries of the SAA and the SAA's sub recipients.
 - 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 have the right to file a complaint with the SAA or the OCR.
 - Submit to the OCR any Findings of Discrimination from a court or administrative agency within the previous three years.
 - Have a Section 504 Coordinator if requirements of the funding recipient meets the employee and funding threshold.
 - SCDPS 504 Coordinator is John Westerhold 803-896-9970

SAA Obligations to monitor Sub recipients

A State Administering Agency must monitor sub recipients' compliance with civil rights laws.

- Ensure that sub recipients complete an EEOP Certification Form (as applicable) and submit certification form or EEOP (if required) to the OCR.
- Ensure that the sub recipient provides notification to employees and beneficiaries that the sub recipient does not discriminate, and that employees and beneficiaries have a right to file a complaint with the SAA or the OCR.
- Ensure that the sub recipient submits to the OCR any Findings of Discrimination from a court or administrative agency within the previous three years.
- Ensure that the sub recipient has a Section 504 Coordinator if it meets the employee and funding threshold.

SAA procedures concerning discrimination complaints

- When handling services discrimination complaints from beneficiaries of the SAA, SAA sub recipients, or the SAA, there are at least three options:
 - Investigation by the 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 and simultaneously notifying the OCR of the referral; OR
 - Sending the complaint to the OCR for investigation.
- SAA employees who receive first notice of a discrimination complaint will immediately refer the complaint to their supervisor who will in turn forward it to the Coordinator for processing.
- SAAs should refer complaints of employment discrimination to the appropriate state or federal agency charged with investigating employment discrimination, while simultaneously notifying the OCR of the referral.

Subrecipient requirements concerning discrimination complaints

- When a subrecipient's employee, client, customer, or program participant files a discrimination complaint directly with them, the subrecipient shall have procedures in place to either investigate the complaint or forward the complaint to OHSJP for referral to the proper investigative entity.
- Subrecipients must notify OHSJP of any complaint that is being investigated by the subrecipient or forward the complaint to OHSJP for processing within five business days of receiving the complaint.
- Subrecipients must notify all employees, clients, customers, and program participants that discrimination is prohibited and of the subrecipient's procedures for filing a complaint of discrimination.

Faith Based Organizations (FBO)

Faith-based Organizations (FBO)

- 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

DOJ Regulations for FBO Guidance (revised April 4, 2016)

- FBOs must not use federal funding to advance inherently 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 beliefs, a refusal to hold a religious belief, or a refusal to participate in a religious practice.

Examples of violations

- A sub recipient's federally-funded life skills training program contains an opening prayer session that all participants are required to engage in as part of the training program.
- A sub recipient Catholic church that uses federal funds to provide counseling to domestic violence victims will only provide counseling to Catholic individuals.
- A faith-based sexual assault program's brochures contain scripture.

New Notice & Referral Requirements for FBOs

- FBOs must give written notice to beneficiaries
- and prospective beneficiaries that:
 - FBO 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;
 - FBO may not require beneficiaries to participate in any religious activities;
 - FBO will separate in time or location any privately-funded religious activities from federally-funded activities; and

New Notice & 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.
 - Alternative provider must be in reasonable geographical proximity to the FBO & offer services comparable in substance & quality.
 - FBO must maintain a record of the referral. If the FBO is unable to identify an alternative provider, it shall notify the SAA or the DOJ.

New Notice & Referral Requirements for FBOs (cont.)

- FBO must provide this written notice prior to the provision of services.
- A sample notice is contained in Appendix A to 28 C.F.R. part 38.
- A sample beneficiary referral request is contained in Appendix B to 28 C.F.R. part 38.

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.

Additional FBO requirements

- An FBO does not need to have 501(c) 3 status in order to receive federal funding EXCEPT
 - A, When funded under the Juvenile Justice and Delinquency Prevention Act and,
 - B, the FBO is a non-profit organization or entity.

FBO Certifications as a Non-Profit

- 501 (c) 3 status on file with the IRS
- Statement from State taxing body or State Secretary of State certifying
 - (a) organization is nonprofit operating within the 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, along with a statement by the state or parent organization that the applicant is a local non-profit affiliate.

Limited English Proficiency (LEP)

Limited English Proficiency (LEP)

- National Origin Discrimination includes:
 - Discrimination on the basis of LEP, defined as a person *who* has a first language other than English, and has a limited ability to read, speak, write, or understand English.

LEP Violations

- To avoid risking *discrimination against persons with LEP*, 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 persons with LEP with meaningful access to programs, services, and information.

LEP Discrimination Prongs

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

Examples of LEP Violations

- On admission to a community shelter, a Spanish-speaking victim of abuse with LEP is interviewed in English (without interpretation).
- A law enforcement officer attempts to question a Korean-speaking individual with LEP regarding the individual's alleged involvement in a crime using hand gestures and having the individual speak in English (without interpretation).
- An advocate attempts to provide Order of Protection assistance to a Russian-speaking victim with LEP without benefit of an interpreter or interpretation services.

Definitions of Language Services

- For oral language services, the provider must ensure interpreter competency
 - Family members, friends, uncertified co-workers and especially children are not appropriate.
- For written language services, the provider must adhere to the Safe Harbor Provision, ensure interpreter competency
 - If 5% or 1,000 (whichever is less) of the service population has 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 (in the predominant languages).

Elements of an LEP Policy

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

Equal Employment Opportunity Plan (EEOP)

Defining 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
- AND becomes a proactive tool to identify possible problem areas where discrimination may be occurring, or could occur.

Determining the Requirement to have an EEOP

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

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

Prepare and Submit EEOP & Certification at <http://ojp.gov/about/ocr/eeop/http>

Preparing an EEOP

- Step-by-step instructions for preparing an EEOP Short Form are online at www.ojp.usdoj.gov/ocr
- For technical assistance:
 - OCR Main Line: 202-307-0690
Fax: 202-354-4380
TDD/TTY: 202-307-2027
OCR E-mail: askOCR@ojp.usdoj.gov
 - Completed EEOPs should be submitted electronically through OCR's EEO Reporting Tool, at <https://ojp.gov/about/ocr/eeop.htm>

OFFICE FOR CIVIL RIGHTS

(202) 307-0690

TTY (202) 307-2027

www.ojp.usdoj.gov/ocr

<http://www.ojp.usdoj.gov/about/ocr/spanishmain.htm>

Thank you for your attention

For comments, suggestions, or questions:

Office of Highway Safety and Justice Programs

<http://www.scdps.sc.gov/ohsjp/cjgp>

803-896-8709 or PhilRiley@scdps.gov

For complaints of civil rights non-compliance please make contact in writing to:

Mr. Phil Riley, Director

Office of Highway Safety and Justice Programs

South Carolina Department of Public Safety

P.O. Box 1993

Blythewood, SC 29016