

# Civil Rights: How you can help.

South Carolina Department of Public Safety  
Office of Highway Safety & 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 grant recipients concerning their civil rights responsibilities upon acceptance of federal funds. 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 law.
- There is a federal Office for Civil Rights that 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*)**
- **Individual Program Statutes (e.g. Safe Streets Act, Victims of Crime Act, JJDPA) (re: *race, color, national origin, sex, religion, disability*)**

# Protected Classes

Race

Color

National Origin

Religion

Sex

Disability

Age

# As pertains to religion:

- Religion is defined as:
  - ALL aspects of religious practice as well as belief
    - 42 USC 2000 e(j)
  - INCLUDES sincerely held moral or ethical beliefs
    - 29 CFR 1605.1

# 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.

## 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 chapter.

# Safe Streets Act, JJDPJA and VOCA

- ALL three 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
    - Burke Fitzpatrick, Administrator OJP 803-896-8702
  - 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](http://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 statute?
- Is the entity covered under the ADA?
- Does the delivery of services involve a protected class?
- Is a protected class receiving unequal treatment?
- Are services provided to everyone, in an equal manner, regardless of their race, creed, color, age, disability, religion, national origin, language, or sexual orientation?

# 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 (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).

# 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 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 \$500,000 or more.

# Federal Office of Justice Programs Civil Rights Enforcement

- Equal Employment Opportunity Plans (EEO Plan)
- 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 Burke Fitzpatrick 803-896-8702

# 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.
- 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.

# 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 \*January 2004

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

## 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.

# 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)

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- 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 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 to programs, services, and information.

# LEP Discrimination Prongs

- 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.
- Other ***resources*** available to the recipient.

# Examples of LEP Violations

- On admission to a community shelter, a Spanish-speaking LEP victim of abuse is interviewed in English (without interpretation).
- A law enforcement officer attempts to question a Korean-speaking, LEP individual 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 LEP victim 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 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 (in the predominant languages).

# Elements of an LEP Policy

- A process for identifying LEP persons who need language assistance
- Information about the available language assistance available
- Training for staff
- Notice to LEP persons, 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

<b>Entity Type</b>	<b># of Employees</b>	<b>Dollar Amount</b>	<b>Submit EEOP to OCR</b>	<b>Preparation and/ or Certif. Required</b>	<b>Assurance Required</b>	<b>Send Findings</b>
<b>Educational, Medical, Nonprofit, or Indian Tribe</b>	<b>n/a</b>	<b>n/a</b>	<b>NO</b>	<b>YES, certifying the entity type</b>	<b>YES</b>	<b>YES</b>
<b>State or Local Govt. &amp; For-Profit Orgs.</b>	<b>n/a</b>	<b>Less than \$25,000</b>	<b>NO</b>	<b>YES, certifying less than \$25,000</b>	<b>YES</b>	<b>YES</b>
<b>State or Local Govt. &amp; For-Profit Orgs.</b>	<b>Less than 50</b>	<b>n/a</b>	<b>NO</b>	<b>YES, certifying less than 50 Employees</b>	<b>YES</b>	<b>YES</b>
<b>State or Local Govt. &amp; For-Profit Orgs.</b>	<b>50 or more</b>	<b>\$25,000 or more but less than \$500,000</b>	<b>NO</b>	<b>YES, prepare and certify EEOP on file for review</b>	<b>YES</b>	<b>YES</b>
<b>State or Local Govt. &amp; For-Profit Orgs.</b>	<b>50 or More</b>	<b>\$500,000 or more for one grant</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>YES</b>

# Preparing an EEOP

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

# OFFICE FOR CIVIL RIGHTS

(202) 307-0690

TTY (202) 307-2027

[www.ojp.usdoj.gov/ocr](http://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 Justice Programs

<http://www.scdps.gov/ojp>

803-896-8439

For complaints of civil rights non-compliance

Burke Fitzpatrick

Administrator, Office of Justice Programs

803-896-8702 or [burkefitzpatrick@scdps.gov](mailto:burkefitzpatrick@scdps.gov)