

Office for Civil Rights Acceptances 2018

In establishing financial assistance programs, Congress linked the receipt of federal funding to compliance with federal civil rights laws. The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is responsible for ensuring that recipients of financial assistance from OJP and the Office on Violence Against Women (OVW) comply with the applicable federal civil rights laws. OCR is available to help subgrantees meet the civil rights requirements that come with DOJ funding.

Subgrantees must comply with all applicable state, local, and federal laws; along with any federal nondiscrimination regulations, including the following.

- Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. § 3789d and 28 C.F.R. §42.201 et seq.)
- Violence Against Women Act of 1994, as amended (42 U.S.C. § 13925(b)(13))
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d and 28 C.F.R. §42.101 et seq.)
- Section 504 of the Rehabilitation Act (29 U.S.C. § 794 and 28 C.F.R. § 42.501 et seq.)
- Section 1407 of the Victims of Crime Act of 1984 (42 U.S.C. § 10604)
- Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132 and 28 C.F.R. Pt. 35)
- Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 and 28 C.F.R. Pt. 54)
- Age Discrimination Act of 1975 (42 U.S.C. § 6102 and 28 C.F.R. § 42.700 et seq.)

Ensuring Access to Federally Assisted Programs

Federal laws applying to subgrantees receiving financial assistance from DOJ prohibit discrimination on the basis of race, color, national origin, religion, sex, or disability in funded programs or activities, not only in employment but also in the delivery of services or benefits. A federal law also prohibits subgrantees from discriminating on the basis of age in the delivery of services or benefits.

In March of 2013, President Obama signed the Violence Against Women Reauthorization Act of 2013. The statute amends the Violence Against Women Act of 1994 (VAWA) by including a nondiscrimination grant condition that prohibits discrimination based on actual or perceived race, color, national origin, religion, sex, disability, sexual orientation, or gender identity. The new nondiscrimination grant condition applies to certain programs funded after October 1, 2013. OCR and OVW have developed answers to some frequently asked questions about this provision to assist VAWA subgrantees understand their obligations. The Frequently Asked Questions are available at <http://ojp.gov/about/ocr/vawafaqs.htm>.

- The VAWA nondiscrimination grant condition applies to STOP Violence Against Women Grant (STOP) and Sexual Assault Services Program (SASP) subgrantees.

Enforcing Civil Rights Laws

All subgrantees receiving federal financial assistance, regardless of the particular funding source, the amount of the grant award, or the number of employees in the workforce, are subject to prohibitions against unlawful discrimination. Accordingly, OCR investigates subgrantees that are the subject of discrimination complaints from both individuals and groups. In addition, based on regulatory criteria, OCR selects a number of direct recipients each year for compliance reviews, audits that require direct recipients to submit data showing that they are providing services equitably to all segments of their service population and that their employment practices meet equal opportunity standards.

Providing Services to Limited English Proficiency (LEP) Individuals

In accordance with DOJ guidance pertaining to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, subgrantees receiving federal financial assistance must take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency (LEP). See DOJ, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (2002). For more information on the civil rights responsibilities that subgrantees have in providing language services to LEP individuals, please see the website <http://www.lep.gov>. **Subgrantees must also comply with these requirements.**

Ensuring Equal Treatment for Faith-Based Organizations and Safeguarding Constitutional Protections Related to Religion

The DOJ regulation, Partnerships with Faith-Based and Other Neighborhood Organizations, 28 C.F.R. pt. 38, updated in April 2016, prohibits all subgrantee organizations, whether they are law enforcement agencies, governmental agencies, educational institutions, house of worship, or faith-based, from using financial assistance from DOJ to fund explicitly religious activities. Explicitly religious activities include worship, religious instruction, or proselytization. While funded organizations may engage in non-funded explicitly religious activities (e.g. prayer), they must hold them separately from the activities funded by DOJ, and subgrantees cannot compel beneficiaries to participate in them. The regulation also makes clear that organizations participating in programs funded DOJ are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. Funded faith-based organizations must also provide written notice to beneficiaries, advising them that if they should object to the religious character of the funded faith-based organization, the funded faith-based organization will take reasonable steps to refer the beneficiary to an alternative service provider. For more information on the regulation, please see the OCR's website at <https://ojp.gov/about/ocr/partnerships.htm>.

Planning, Grants, and Research (PGR) and faith-based organizations should also note that the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, 34 U.S.C. § 10228(c); the Victims of Crime Act of 1984, as amended, 34 U.S.C. § 20110(e); the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 34 U.S.C. § 11182(b); and VAWA, as amended, 34 U.S.C. § 12291(b)(13), contain prohibitions against discrimination on the basis of religion in employment. Despite these nondiscrimination provisions, the DOJ has concluded that it may construe the Religious Freedom Restoration Act (RFRA) on a case-by-case basis to permit some faith-based organizations to receive DOJ funds while taking into account religion when hiring staff, even if the statute that authorizes the funding program generally forbids recipients from considering religion in employment decisions. Please consult with the OCR if you have any questions about the regulation or the application of RFRA to the statutes that prohibit discrimination in employment.

Using Arrest and Conviction Records in Making Employment Decisions

OCR issued an advisory document for subgrantees on the proper use of arrest and conviction records in making hiring decisions. See Advisory for Recipients of Financial Assistance from DOJ on the U.S. Equal Employment Opportunity Commission's Enforcement Guidance: *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (June 2013)*, available at https://ojp.gov/about/ocr/pdfs/UseofConviction_Advisory.pdf. Subgrantees should be mindful that the misuse of arrest or conviction records to screen either applicants for employment or employees for retention or promotion may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination. In light of the Advisory, subgrantees should consult local counsel in reviewing their employment practices. If warranted, subgrantees should also incorporate an analysis of the use of arrest and conviction records in their Equal Employment Opportunity Plans (EEOs) (see below).

Complying with the Safe Streets Act

Subgrantees receiving financial assistance subject to the nondiscrimination provisions of the Safe Streets Act, must meet two obligations: (1) complying with the federal regulation pertaining to the development of an EEOC (see 28 C.F.R. pt. 42, subpt. E) and (2) submitting to OCR findings of discrimination (see 28 C.F.R. §§ 42.204(c), .205(c)(5)).

1) Meeting the EEOC Requirement

An EEOC is a comprehensive document that analyzes a subgrantee's relevant labor market data, as well as the subgrantee's employment practices, to identify possible barriers to the participation of women and minorities in all levels of a subgrantee's workforce. As a subgrantee of DOJ funding, you may be required to submit an EEOC Certification Report or an EEOC Utilization Report to the OCR. For more information on whether your organization is subject to the EEOC requirements, see <https://ojp.gov/about/ocr/eooc.htm>. Additionally, you may request technical assistance from an EEOC specialist at the OCR by telephone at (202) 616-1771 or by email at EEOCforms@usdoj.gov.

2) Meeting the Requirement to Submit Findings of Discrimination

If in the three (3) years prior to the date of the grant award, your organization has received an adverse finding of discrimination based on race, color, national origin, religion, or sex, after a due-process hearing, from a state or federal court or from a state or federal administrative agency, your organization must send a copy of the finding to OCR and Idaho State Police Planning, Grants, and Research (PGR).

Ensuring the Compliance of Subgrantees

PGR must have standard assurances to notify subgrantees of their civil rights obligations, written procedures to address discrimination complaints filed against subgrantees, methods to monitor subgrantees' compliance with civil rights requirements, and a program to train subgrantees on applicable civil rights laws. In addition, PGR must submit to OCR every three (3) years written Methods of Administration (MOA) that summarize the policies and procedures that they have implemented to ensure the civil rights compliance of subgrantees. For more information on the MOA requirement, see <https://ojp.gov/funding/Explore/StateMethodsAdmin-FY2017update.htm>.

If OCR can assist you in any way in fulfilling your organization's civil rights responsibilities as a subgrantee receiving federal financial assistance, please contact them (see contact information above).

OCR Training

A link to the six (6) training programs provided by OCR is posted on PGR's website at www.isp.idaho.gov/pgr/civil-rights as well as a transcript version of the trainings. The trainings and transcript can also be viewed directly on OCR's website at <https://ojp.gov/about/ocr/assistance.htm>. All subgrantees must review this training presentation, in addition to reading and complying with these acceptances.

Procedures for Responding to Employment and Services Discrimination Complaints for Idaho State Police Planning, Grants, and Research Subgrantees

As a condition of accepting a subgrant award from PGR, all subgrantees must review this procedure, which is attached to these acceptances. Subgrantees should post this procedure in a location accessible to subgrantee employees and customers and ensure those responsible for complaints in their agency are familiar with this procedure.