

Civil Rights Training

For OVC Grantees

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U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

Legal Disclaimer

This presentation is for informational purposes only and does not constitute legal advice. For additional technical assistance or to answer specific questions, please contact the Office for Civil Rights (OCR) at:

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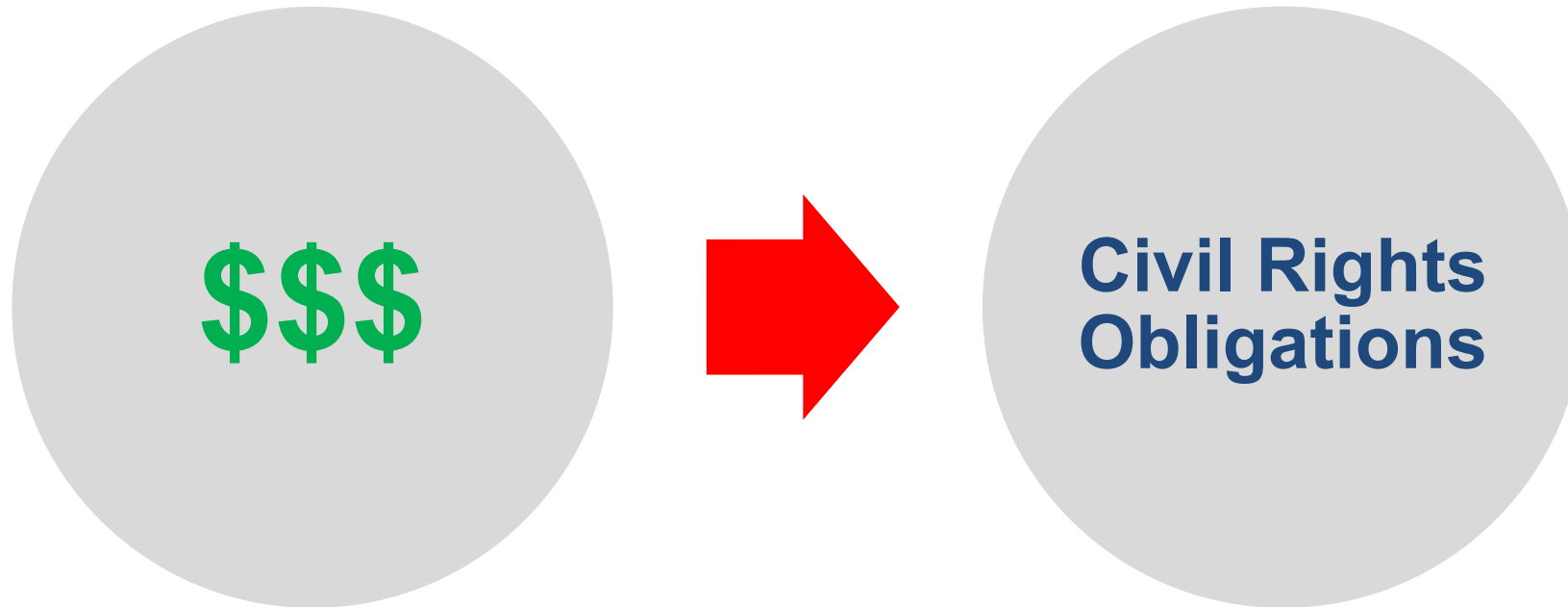
About Us

The **Office of Justice Programs (OJP)** provides innovative leadership to federal, state, local, and tribal justice systems by disseminating, and providing grants to implement, state-of-the-art knowledge and practices.

The **Office for Civil Rights (OCR)** ensures that recipients of financial assistance from the OJP, Office of Community Oriented Policing Services (COPS Office), and Office on Violence Against Women (OVW) comply with federal laws that prohibit discrimination in employment and the delivery of services or benefits.



Civil Rights Requirements & the OCR's Enforcement Authority



The OCR Enforces

Title VI of the Civil Rights Act of 1964

Race, color, and 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., VAWA, VOCA, Safe Streets Act, JJDPA)

Race, color, national origin, sex, religion, disability, sexual orientation, and gender identity



Protected Classes

- Race
- Color (includes Intra-Racial Discrimination)
- National Origin (includes Limited English Proficiency (LEP))
- Religion
- Sex (includes Sexual Harassment)
- Disability
- Age
- Sexual Orientation (VAWA only in text)
- Gender Identity (VAWA only in text)



Discrimination on the Basis of Sex

In *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the Supreme Court held that the prohibition on discrimination “because of . . . sex” in *Title VII* of the Civil Rights Act of 1964 covers discrimination on the basis of **gender identity** and **sexual orientation**.



Discrimination on the Basis of Sex

President Biden’s Executive Order 13988 explains that *Bostock*’s reasoning applies with equal force to other laws that prohibit sex discrimination “so long as the laws do not contain sufficient indications to the contrary.”



Discrimination on the Basis of Sex

The Department of Justice (DOJ), issued a Notice of Interpretation stating that the *Bostock* decision regarding the protected class of “sex” also applies to the nondiscrimination provisions of the DOJ’s program funding statutes, including **VOCA**, **VAWA**, **JJDPA**, the **Safe Streets Act**. DOJ previously determined that the *Bostock* decision applies to Title IX.

The DOJ concluded that the protected class of sex discrimination prohibited in these DOJ-funding statutes, and in Title IX, includes discrimination on the basis of **sexual orientation**, **gender identity**, and **intersex traits**.



No Retaliation

Recipients cannot take an adverse action against someone for opposing discrimination, including:

- Harassment
- Demotion
- Discharge
- Denial of services



Who is Subject to These Laws?

Any “**program or activity**” that receives financial assistance from the DOJ = all operations of an organization receiving federal financial assistance, such as an entire department or office within a state or local government.

Examples:

- If a state Department of Public Safety receives federal funding and subawards the funding to local community based organizations, all of the operations of the Department of Public Safety are covered, along with the operations of the local community based organizations.
- If a rape crisis center receives federal funds and uses the funds to operate particular programs, all of the activities of the center are covered, not just the federally-funded programs.
- If a project of a county sheriff’s department receives federal funds, the entire sheriff’s department is covered, but not the other departments in the county.



OCR's Civil Rights Enforcement



Filing a Complaint with the OCR

Who may file a Complaint:

- Client
- Employee or applicant for employment
- Third party

Complaint Review Process:

1. Jurisdiction
2. Investigation
3. Findings
4. **Voluntary compliance**
5. Suspension or termination of funding



Obligations of Federally Funded Tribes & Tribally Affiliated Service Providers

Tribes may be eligible for federal grants as a unit of local government. Tribally affiliated service providers may also be eligible for federal grants. Both incur civil rights obligations as a condition of accepting federal aid and, thus, cannot discriminate against a beneficiary based on race, color, national origin, sex, religion, disability, or age.

However:

1. Tribes are **not** bound by the DOJ program statutes that prohibit employment discrimination. As a result, tribes that receive DOJ funding do **not** violate federal civil rights laws in exercising an American Indian preference in their employment practices.
2. Funded tribes are exempt from the requirement under the Safe Streets Act to prepare or submit an Equal Employment Opportunity Plan (EEOP) to the OCR. Funded tribes must simply file a certification with the OCR attesting to the exemption based on tribal status.



American Indian & Alaska Native Beneficiaries

- Civil rights laws apply to American Indians and Alaska Natives as protected classes based on race or national origin. American Indians and Alaska Natives have also often relied on the protected class of religion to counter discrimination based on religious practice.
- The legal definition of American Indian for civil rights protections is not the same legal definition of American Indian for some federal entitlement programs.

For example, if an American Indian brings an employment discrimination claim against a funded employer, the American Indian would not need to show a percentage of ancestry or prove bloodlines or be an enrolled member of a tribe. The complainant would be covered under federal law, as long as the employer reasonably believed that the employee was a member of a protected class based on some objective evidence, which may consist of physical appearance, language, cultural activities, or association.



Title VI

Civil Rights Act of 1964



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Title VI Protection

Statutory provision:

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.

Section 601 of Title VI of the Civil Rights Act of 1964 (codified at 42 U.S.C. 2000d).
DOJ implementing regulation: Subparts C and D of 28 C.F.R. Part 42.



Title VI Prohibits

Any of the following based on race, color, or national origin:

- Denying an individual a disposition, service, or benefit
- Subjecting an individual to segregation or separate treatment
- Applying different admission, enrollment or eligibility standards or requirements
- Denying participation as a member of a planning or advisory body, which is an integral part of the program
- Selecting a site or location with the purpose or effect of discriminating



Limited English Proficiency



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What is Limited English Proficiency (LEP)?

“Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or ‘LEP,’ entitled to language assistance.”



To Prevent LEP Discrimination, Recipients Must:

- Take reasonable steps to ensure meaningful access to programs, services, and information free of charge
- Establish an LEP implementation plan to address the identified language assistance needs of LEP populations

Assessed based on a 4 Factor Analysis:

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



Language Assistance Services

Provide free
oral
language
services

AND

Provide free
translation
of vital
documents

Ensure Interpreter and Translator Competency

- Family members, friends, uncertified co-workers, or Google Translate are **not** appropriate.

Safe Harbor Provision

If 5% of the service population or 1,000 (whichever is less) 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 is meaningful access?

- During intake of a victim services program, an employee interviews a Spanish-speaking LEP victim of abuse using hand gestures and having the individual speak in broken English (without interpretation).
- A police officer attempts to question a victim of domestic violence by using the alleged abuser as an interpreter.

Have these individuals been afforded meaningful access?



What Should a Written LEP Policy Have?

FIVE ELEMENTS:

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



**Section 504 of the
Rehabilitation Act of 1973,**

**Title II of the
Americans with Disabilities Act of 1990,**

&

**Americans with Disabilities Act
Amendment Act of 2008**



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Federal Disability Discrimination Laws

Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination on the basis of disability by **recipients of federal funding**.

Title II of the Americans with Disabilities Act of 1990 (Title II of the ADA) 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 is an Act to “restore the intent and protections of the ADA of 1990.” Congress found that the definition of “handicapped person” had not been interpreted consistently with Section 504.



Section 504 Protection

Statutory provision:

No otherwise **qualified individual with a disability** in the United States, as defined in [29 U.S.C. 705(20)], shall, **solely by reason of her or his 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[.]

Section 504 of the Rehabilitation Act of 1973 (codified at 29 U.S.C. 794).

DOJ implementing regulation: Subpart G of 28 C.F.R. Part 42.



Section 504 and Title II of the ADA

A person with a disability or disabilities is an individual who:

- Has a physical or mental impairment, which substantially limits one or more major life activity/ies,
- Has a record of such an impairment *OR*
- Is regarded as having such an impairment



Prohibited Disability Discrimination

- Denial of participation in program or activity
- Denial of opportunity for same benefit
- Different or separate services
- Denial of participation in planning or advisory body
- Ineffective communication



Disability Discrimination Analysis

- DOJ funding recipients **must** provide **reasonable accommodations** to the known physical or mental limitations of an otherwise qualified individual with a disability **unless** a recipient can demonstrate that it would be an undue hardship or would fundamentally alter the service or activity.
- Every case requires **individualized analysis** – individuals with disabilities are not a homogenous group even those with the same disability.



Section 504 Hypothetical:

A shelter for victims of violence receives federal funds. The shelter has a **blanket policy** that residents cannot take any prescribed psychotropic medications while staying at the shelter.

Is this policy acceptable under federal disability discrimination laws?



Section 504 Answer: **No.**

By having a blanket exclusionary policy, the shelter has discriminated against individuals who may have a mental health disability that is controlled by medication.

The shelter must perform **individualized assessments**.



Section 504

A recipient with **50 or more employees and receiving \$25,000 or more** in financial assistance from the DOJ must:

1. Designate a Section 504 compliance coordinator;
2. Adopt grievance procedures; and
3. Notify program participants, beneficiaries, applicants, employees, unions, and organizations with collective bargaining agreements, that the recipient does not discriminate on the basis of disability.



ADA and Section 504 Resources

Disability Rights Section (DRS), Civil Rights Division, DOJ

- Technical Assistance
- Outreach Initiatives
- www.ADA.gov
- Toll-Free Information Line:
 - 800-414-0301 (voice)
 - 800-514-0383 (TTY)



Title IX of the Education Amendments of 1972



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Title IX Protection

Statutory provision:

No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any **education program or activity** receiving Federal financial assistance[.]

Section 901 of Title IX of the Education Amendments of 1972
(codified at 20 U.S.C. 1681).

DOJ implementing regulations: Subpart D of 28 C.F.R. Part 42; 28 C.F.R Part 54.



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Age Discrimination Act of 1975



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Age Discrimination Act Protection

Statutory provision:

[N]o person in the United States shall, on the basis of **age**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any **program or activity** receiving Federal financial assistance.

Section 303 of the Age Discrimination Act of 1975 (codified at 42 U.S.C. 6102).
DOJ implementing regulation: Subpart I of 28 C.F.R. Part 42.



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NOTE: Trafficking Victims Protection Act (TVPA)

- For grantees whose funds come through the TVPA, as with all grantees who are recipients of federal financial assistance, all of the (aforementioned) federal statutes apply
- For grantees whose funds come through the VOCA, all of the federal statutes apply, & VOCA also requires **additional** civil rights protections (explained in detail later)



OJP Program Statutes & Associated Nondiscrimination Provisions



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Omnibus Crime Control and Safe Streets Act (Safe Streets Act)

Nondiscrimination provision:

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.

Section 809(c) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (codified at 34 U.S.C. 10228(c); see *also* 34 U.S.C. 11182(b)).

DOJ implementing regulation: Subpart D of 28 C.F.R. Part 42.



Victims of Crime Act of 1984 (VOCA)

Nondiscrimination Provision:

No person shall on the ground of **race, color, religion, national origin, [disability], 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 subchapter.

Section 1407(e) of the Victims of Crime Act of 1984 (codified at 34 U.S.C. 20110(e))
DOJ implementing regulation: Subpart B of 28 C.F.R. Part 94.



VOCA Protected Classes Recap

Race, Color and National Origin	Sex	Sexual Orientation and Gender Identity	Disability	Age	Religion
<ul style="list-style-type: none"> • <u>Title VI of the Civil Rights Act</u> • Victims of Crime Act • Safe Streets Act • Juvenile Justice and Delinquency Prevention Act • Violence Against Women Act 	<ul style="list-style-type: none"> • <u>Title IX of the Education Amendments</u> • Victims of Crime Act • Safe Streets Act • Juvenile Justice and Delinquency Prevention Act • Violence Against Women Act 	<ul style="list-style-type: none"> • Safe Streets Act • Juvenile Justice and Delinquency Prevention Act • Victims of Crime Act • Violence Against Women Act 	<ul style="list-style-type: none"> • <u>Section 504 of Rehabilitation Act</u> • <u>Title II of the Americans with Disabilities Act</u> • Victims of Crime Act • Violence Against Women Act 	<ul style="list-style-type: none"> • <u>Age Discrimination Act</u> 	<ul style="list-style-type: none"> • Safe Streets Act • Juvenile Justice and Delinquency Prevention Act • Victims of Crime Act • <u>28 C.F.R. pt. 38</u> • Violence Against Women Act

Underlined applies to ALL recipients of federal funds (inc. VOCA and TVPA grantees)



Violence Against Women Reauthorization Act of 2013 (VAWA)

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, United States Code), **sexual orientation**, or **disability**, be excluded from participation in, be 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 [OVW].

Grant condition in OVW awards, as required by section 40002(b)(13) of the Violence Against Women Act of 1994 (codified at 34 U.S.C. 12291(b)(13))



VAWA (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 OCR has posted FAQs on the VAWA nondiscrimination provision at <https://ojp.gov/about/ocr/pdfs/vawafaqs.pdf>.



VAWA (continued)

Nothing in this title shall be construed to prohibit male victims of domestic violence, dating violence, sexual assault, and stalking from receiving benefits and services under this title.



What grants are covered by the VAWA nondiscrimination grant condition?

- OVW Grants awarded on or after October 1, 2013.
- Covers “programs and activities,” including employment, and “actual or perceived” protected basis
- Applies to all recipients, including funded State Administering Agencies (SAAs), Faith-Based Organizations (FBOs), and law enforcement agencies.



VAWA: Sex-Segregation and Sex-Specificity

Sex-Segregated Programming: When males and females receive services in separate settings (e.g., residential shelter, support group).

Sex-Specific Programming: When a recipient designs programming differently for males and females (e.g., campus peer educational workshop).

Beneficiaries choose the appropriate program based on their gender identity.



VAWA: Sex-Segregation and Sex-Specificity

- Necessary for the essential operation of the programming
- Fact-specific inquiry; consider each service individually:
 - Nature of the service
 - Consequences to beneficiaries
 - Literature on efficacy
 - Impact on transgender and gender nonconforming clients
 - Reasons may not be trivial, based solely on convenience or rooted in stereotypes



VAWA: Comparable Services

Comparable Services

Fact-specific inquiry – considering the following:

- Nature, quality, and duration of the service
- Relative benefits of different therapeutic modalities
- Geographic location



VAWA: Gender Identity

What is Gender Identity?

- “Actual or perceived gender-related characteristics” (from Matthew Shepard- James Bird Hate Crimes Prevention Act)
- A person’s internal view of the individual’s gender
- May or may not correspond to sex assigned at birth
- Transgender, male, and female are examples of gender identities



VAWA: Serving Transgender Clients in Sex-Segregated Settings

Serving Transgender Clients

- Assign clients to services that correspond to the gender with which they identify – Ask the client!
- Consider transgender victim's health and safety in making housing assignments
- Transgender client's own views regarding personal safety deserves serious consideration
- Do not isolate or segregate
- Do not make burdensome demands for identity documents
- Do not inquire into surgery or other medical interventions



Funded Faith-Based Organizations (FBOs):

- Must not use federal funding to advance an “explicitly” religious activity
- Must conduct any explicitly religious activity at a separate time or location from the federally funded activity, and must ensure that it is voluntary
- Cannot discriminate against beneficiaries based on religion, religious belief, refusal to hold a religious belief, or refusal to participate in a religious practice
- Do not need to remove religious art, icons, messages, or symbols
- Retain authority over their internal governance
- May keep religious terms in their names
- May select board members on a religious basis
- May keep religious references in mission statements and governing documents



FBOs & Employment

- Grantee FBOs retain an exemption from the Title VII prohibition on religious discrimination in employment
- A grantee FBO may hire based on religion if certifying that:
 - 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.



FBO Written Notice Requirement

A funded FBO must give **written notice** to its beneficiaries stating that:

- It will not discriminate on the basis of religion
- It will not require beneficiaries to participate in explicitly religious activities
- If the beneficiary **objects to the religious character** of the recipient, the FBO will undertake reasonable efforts to refer the beneficiary to an alternative provider
- It will report violations to the OCR or the intermediary agency that awarded the funds to the organization



FBO Hypotheticals:

Are these acceptable?

1. An atheist participant in a human trafficking support group run by a funded faith-based organization is required to participate in an opening prayer session before the group begins.
2. A woman seeking services at a local nonprofit shelter for human trafficking survivors is told not to use her prayer rug in her room while she is a resident of the shelter.



FBO Answer: **No.**

A funded FBO cannot require a beneficiary to participate in religious exercises or program with faith content.

A funded FBO cannot deny a beneficiary access to religious services, pastoral counselor, special dietary needs, or items of the beneficiary's faith.



Equal Employment Opportunity Plan (EEO)

Programs Overview

What is an EEO Program?

An Equal Employment Opportunity Program is an **all-encompassing program with several components** which address the ways that an organization ensures equal employment opportunities are available to all groups of people, specifically addressing the level of participation of minorities and women in the organization's workforce.

One component of an organization's EEO Program is a comprehensive **written EEO Plan**, which includes as a sub-component an EEO Utilization Report.

The **EEO Utilization Report** must be submitted to the Office for Civil Rights (OCR).



EEOP Coverage

Which grantees are covered?

EEO Programs are required by a federal regulation that implements the [provision prohibiting employment discrimination in the Omnibus Crime Control and Safe Streets Act of 1968](#) (Safe Streets Act). With some exceptions, **recipients of Justice Department funding subject to the civil rights requirements of the Safe Streets Act must create and implement an EEO Program** in accordance with [28 C.F.R. § 42.301-.308](#).

Are any grantees generally exempt?

Recipients with less than 50 employees; whose largest single DOJ award is less than \$25,000; health care or educational institutions; or federally recognized Indian tribes are exempt from the EEOP requirements

However even **exempt recipients of DOJ funding must prepare and submit an online Certification Form** to the OCR to either claim the exemption or to acknowledge their reporting requirements.



EEOP Preparation & Submission

What must be prepared?

Covered recipients must prepare a **comprehensive written plan that includes timeframes and specific actions** to be taken to ensure ongoing equal employment opportunity for members of protected classifications.

A component of the written EEO plan is the Utilization Report, a **workforce analysis** comparing recipients workforce to their area labor market. The report also includes the recipient's **EEO policy statement, objectives and steps to eliminate underutilizations, and dissemination plans.**

What must be submitted?

Utilization Reports must be submitted to OCR. Comprehensive EEO plans must be available to OCR for review upon request.

When are submissions due?

The **initial Utilization Report is due 120 days after the award date** of the initial covered award and **subsequent submissions are due two years** after the date on the previous approval letter from OCR.

Certifications Forms are due every year within 120 days of initial award date.



EEOP Questions

Where should I direct grantees with questions?

www.ojp.gov/program/civil-rights/equal-employment-opportunity-program-eeop-faqs

If the answer isn't clear from reviewing the FAQs or the Online Tool Job Aid,

PLEASE tell the grantee to contact OCR directly

Current EEOP contacts:

Tiffany Harding tiffany.harding@usdoj.gov 202-598-6458

Denise Viera denise.viera@usdoj.gov 202-514-9601



Resources:

OCR Online Training: The OCR has training presentations that are helpful for grantees (and grant managers):

<https://www.ojp.gov/program/civil-rights/video-training-grantees/overview>

Disability Information: The Disability Rights Section (DRS) of the DOJ's Civil Rights Division has many helpful resources to assist in understanding the requirements of the ADA:

www.ada.gov

LEP Information: Tips and tools for different types of agencies on how to comply with LEP requirements:

www.lep.gov



Contact Information for the OCR

Website: www.ojp.usdoj.gov/ocr

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Questions?



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