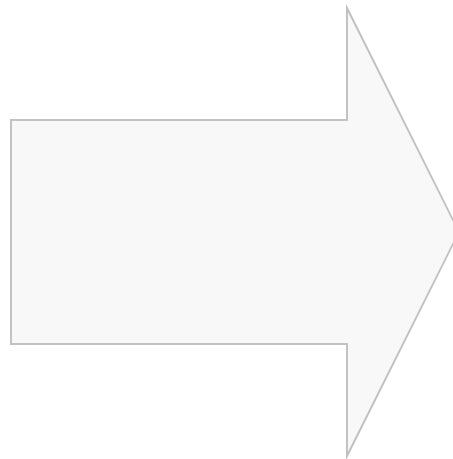
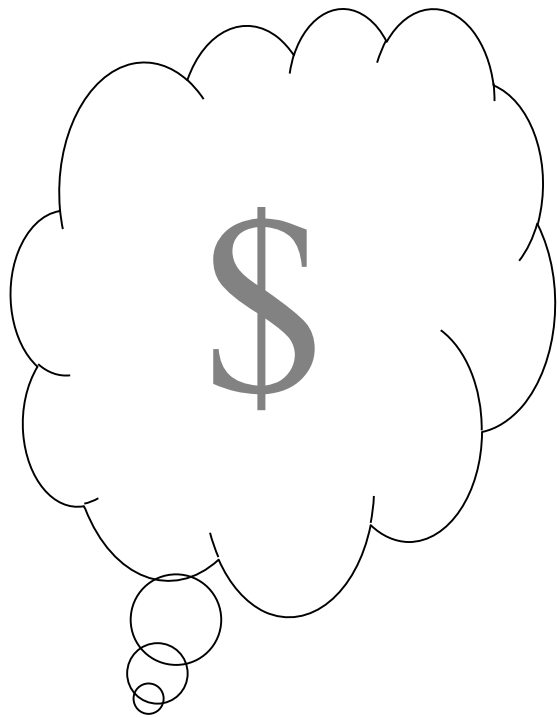


VAWA and VOCA Compliance: Office for Civil Rights March 26, 2018



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Office for Civil Rights, Office of Justice Programs



The Office for Civil Rights Enforces

- **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*)

Omnibus Crime Control and
Safe Streets Act of 1968
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.

34 U.S.C. § 10228(c)

Victims of Crime Act of 1984 Nondiscrimination Provision

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 subchapter.

34 U.S.C. § 20110(e)

Violence Against Women Act
Reauthorization Act of 2013
Nondiscrimination Provision

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 Office on Violence Against Women.

VAWA Reauthorization Act of 2013 (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)

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

VAWA Reauthorization Act of 2013 (*continued*)

- Sex-Segregated Programming
 - When males and females receive services in separate settings
- Sex-Specific Programming
 - When a recipient designs programming differently for males and females

Beneficiaries choose the appropriate program based upon gender identity

VAWA Reauthorization Act of 2013 (*continued*)

- Necessary to the Essential Operation of a Program
 - Fact-specific inquiry, consider:
 - Nature of the service
 - Consequences to beneficiaries of making sex-segregated or sex-specific
 - Literature on efficacy
 - Impact on transgender clients

Reasons may not be trivial, based solely on convenience, or rooted in stereotypes

VAWA Reauthorization Act of 2013 (*continued*)

- 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 Reauthorization Act of 2013

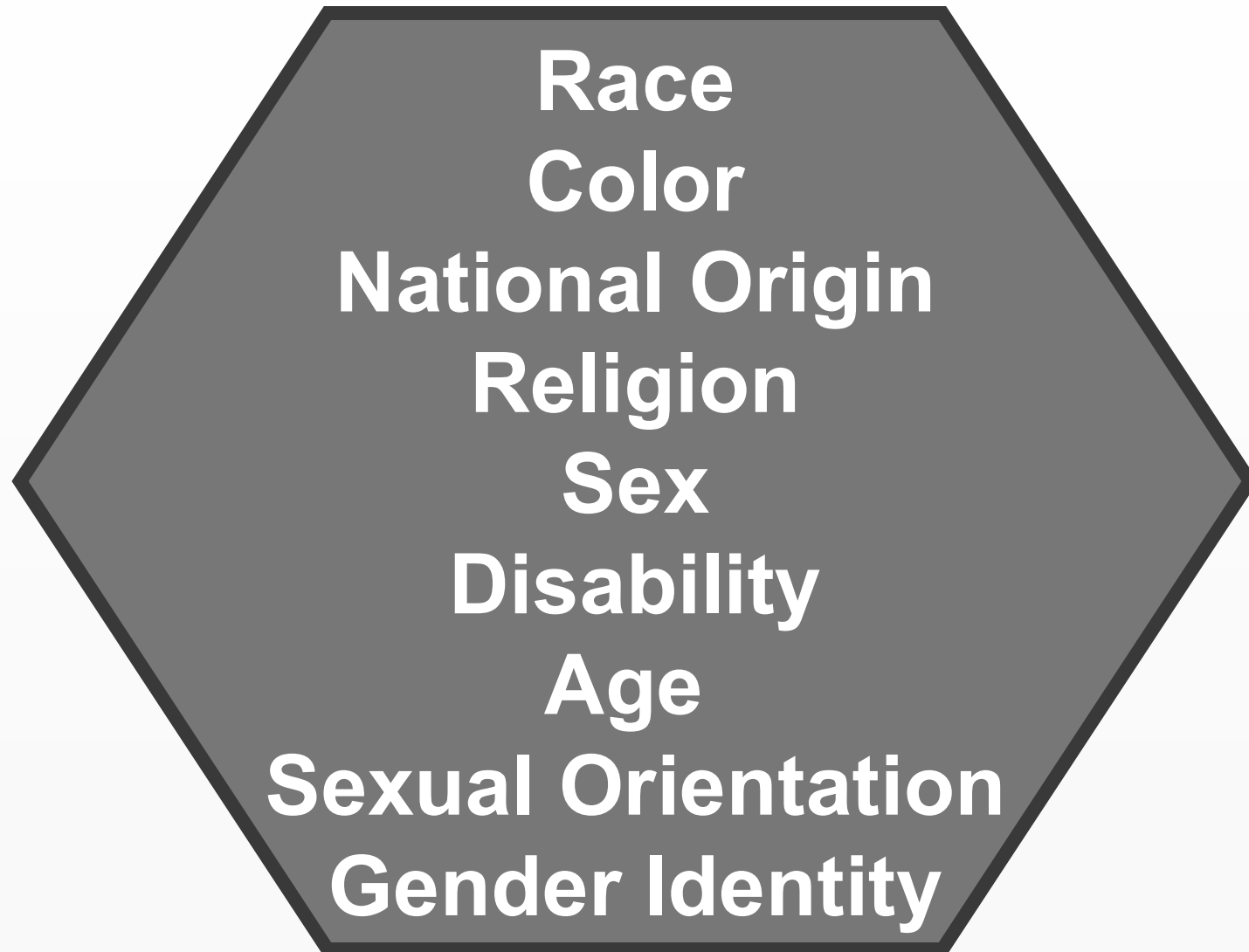
(continued)

- **Serving Transgender Clients**
 - Assign clients to service which corresponds to the gender with which the client identifies
 - Consider transgender victim's health and safety in making housing assignments
 - Transgender client's own views regarding personal safety deserve serious consideration
 - Do not isolate or segregate
 - Do not make burdensome demands for identity documents
 - Do not inquire into surgery or other medical interventions

Who is subject to these laws?

- Any “PROGRAM OR ACTIVITY” that receives financial assistance from the DOJ.
- Program or Activity means all of the operations of an organization receiving federal financial assistance, such as the 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, and 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.

Protected Classes



The statutes that the OCR enforces prohibit discrimination in:

- Employment Practices
and/or
- Delivery of Services

Examples of discrimination in the delivery of services

- A funded domestic violence clinic has a blanket policy of only providing services to female victims of domestic violence, and not male victims.
- Male employees at a funded detention center sexually harass female occupants.
- A culturally-based sexual assault services program that is primarily designed to provide services to Hispanic individuals turns away a non-Hispanic individual seeking services.

Disability

- 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 definition of handicapped individual had not been interpreted consistently with Section 504.

Under Section 504 and Title II of the ADA:

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**

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 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.

Example:

- A shelter for abuse victims receives VAWA funds.
- The shelter has a blanket policy that residents can not be taking any prescribed psychotropic medication while staying at the shelter.
- IS THIS AN ACCEPTABLE POLICY?

Answer:

- NO!
- By having a blanket exclusionary policy, the shelter has discriminated against individuals who may have a mental disability that may be controlled by medication.
- An individualized assessment must be done of the resident.

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**

Religion

Definitions

**All aspects of religious practice
as well as belief**

42 USC 2000e(j)

**Includes sincerely held moral or
ethical beliefs**

29 CFR 1605.1

FAITH-BASED ORGANIZATIONS

- ┌ 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 issued for FBO guidance (revised April 4, 2016)

- 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.

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

New Notice and Referral Requirements for FBOs (cont.)

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

Are these practices acceptable?

- An atheist participant in a victims of crime support group run by a funded faith-based organization is required to participate in an opening prayer session before the group begins.
- A woman seeking services at a local nonprofit shelter for battered women is not allowed to pray her rosary in her room while she is a resident of the shelter.

No!

- The first would be an impermissible requirement to participate in religious exercises or program with faith content.
- The second would be denial of access to religious services, pastoral counselor, special dietary needs, or items of a person's faith.

FBO Reg & Employment

- Funded 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).



A Limited English Proficient (LEP) person has a first language other than English and a limited ability to read, speak, write, or understand English.

*To avoid
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.

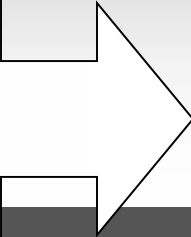
What are reasonable steps?

Four Factor Analysis

- 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.
- The ***number or proportion*** of LEP persons served or encountered in the eligible service population.
- The ***resources*** available to the recipient.

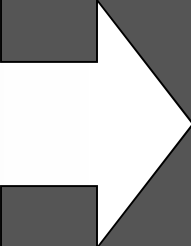
What are language services?

Provide
oral
language
services



and

Provide
translation
of written
materials



Insure Interpreter Competency

Usually family members, friends, and uncertified co-workers are not appropriate.

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).

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 persons been
afforded meaningful access?*

What should a written LEP Policy have?

Five Elements

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

No Retaliation

*On what bases do recipients
have to comply with the laws?*

- Statute
- Contract
- Regulation

OJP's Civil Rights Enforcement

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

What is 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**
- **A tool used to identify possible problem areas where discrimination may be occurring**

Does an agency have 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

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 and Certification at
<https://ojp.gov/about/ocr/eeop.htm>

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:** <https://ojp.gov/about/ocr/assistance.htm> - OCR has posted training presentations on our website addressing a variety of civil rights topics.

Office for Civil Rights

(202) 307-0690

<https://ojp.gov/about/offices/ocr.htm>