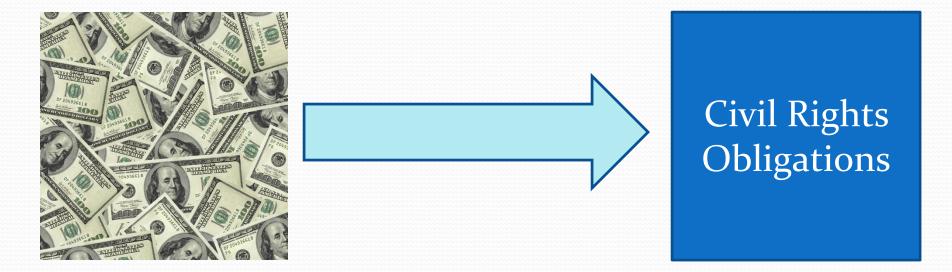
Colorado Department of Public Safety Division of Criminal Justice October, 2017

Civil Rights Obligations for Recipients of U.S. Department of Justice Federal Grant Funds

One Simple Concept...



Whenever Federal funds are involved, there are civil rights requirements that follow –federal revenues cannot be used in a discriminatory manner.

In this presentation, you will review:

- A list of civil rights statutes and regulations that apply to your agency as a result of U.S. Department of Justice federal funding
- Limited information on each statute
- Description of protected classes
- Employees and program beneficiaries
- Forms of employment discrimination
- Harassment/Hostile work environment
- Protection against retaliation
- Civil rights laws and American Indians
- Limited English Proficiency
- Executive Orders for funded Faith-Based Agencies
- Equal Opportunity Employment Plan (EEOP)
- Civil Rights Enforcement
- Summary Checklist for Civil Rights
- Resources and Disclaimers

Federal funds managed by the Division of Criminal Justice (DCJ) come through the U.S. Department of Justice.

> •U. S. Department of Justice, Office of Justice Programs, and Office on Violence Against Women

•State of Colorado, Colorado Department of Public Safety, *Division of Criminal Justice*

•State and local government, and non-profit agencies in the form of grant contracts

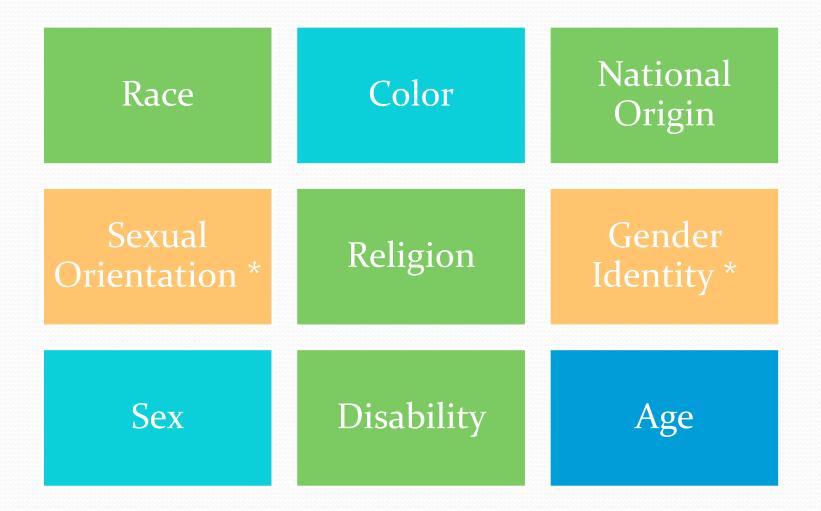
There are many state and federal civil rights laws that may apply to your agency. This presentation covers only those that apply because your agency receives federal Justice Department funds. The civil rights obligations for these funds are contained in the following statutes, and are enforced by the *Office for Civil Rights*, U.S. Department of Justice. <u>https://ojp.gov/about/offices/ocr.htm</u>

- Title VI of the Civil Rights Act of 1964
- The Omnibus Crime Control & Safe Streets Act of 1968 (covers VAWA civil rights protections also)
- Section 504 of the Rehabilitation Act of 1973
- Title II of the Americans with Disabilities Act of 1990
- Age Discrimination Act of 1975
- Title IX of the Education Amendments of 1972
- Section 1407 of the Victims of Crime Act (VOCA)
- Juvenile Justice and Delinquency Prevention Act, adopted by reference to the Safe Streets Act
- Victims of Crime Act of 1984
- Violence Against Women Act (VAWA) of 1994
- Executive Orders on Faith-Based Programs
- Summary Checklist for Civil Rights Compliance

Each statute provides different, sometimes overlapping, civil rights protections.

Taken together, the statutes provide civil rights protections (for recipients of Justice Department funds) for the following protected classes:

Protected Classes (*OVW funded only)



What is a Protected Class?

- A Protected Class is a group of people who benefit from protection against discrimination by law.
- A person does not bring a discrimination claim under federal law based on how he or she has been treated as an individual.
- The claim relates to how the individual has been denied certain rights based on being a member of a group.

To Whom do the Provisions Apply?

- Generally, the statutes apply to all government and non-government recipients of federal financial assistance, unless otherwise noted .
- Within state and local governments, the entire department or office within a state or local government is identified as the "program or activity" covered by the laws.
 - Example: If a project in a county sheriff's department receives Federal funds, the entire sheriff's department is covered, but not the other departments in the county.

Employees and Program Beneficiaries

Each statute specifies whether the protected classes for that law include Employees, or Program Beneficiaries, or both.

EMPLOYMENT PRACTICES: Recruitment, hiring and other personnel management policies and practices

PROGRAM BENEFICIARIES: The person(s) ultimately receiving the services or benefits of the federal funds

STATUTE	Covers EMPLOYMENT PRACTICES ?	Covers PROGRAM BENEFICIARIES ?	PROTECTED CLASS(ES)
1.Title VI of the Civil Rights Act of 1964	NO	YES	Race, Color, and National Origin for all sources of federal funding
2.Section 504 of the Rehabilitation Act of 1973	YES	YES	Disability for all sources of federal funding.
3.Title II of the Americans with Disabilities Act of 1990	YES	YES	Disability in all public entities whether or not federal funds are involved.
4.Age Discrimination Act of 1975	NO	YES	Age for all sources of federal funding
5.Title IX of the Education Amendments of 1972	NO	YES	Sex Discrimination in Educational Programs.
 6.The Omnibus Crime Control & Safe Streets Act of 1968 *Juvenile Justice and Delinquency Prevention Act of 1974 adopts the civil rights obligations of the Safe Streets Act. 	YES	YES	Race, Color, Religion, National Origin, and Sex for all Dept. of Justice federal funding.
7. Victims of Crime Act	YES	YES	Race, Color, Religion, National Origin, Sex, and Disability for all Dept. of Justice federal funding.
8. Violence Against Women Act (VAWA)	YES	YES	Race, Color, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, and Disability for all Dept. of Justice – Office on Violence Against Women (OVW) federal funding.

1. Title VI, Civil Rights Act of 1964

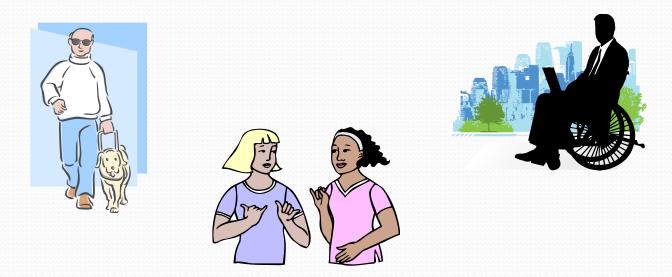
"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Title VI Regulations Prohibit:

- Providing different services to individuals based on race, color or national origin
- Denying the opportunity to participate as a member of planning or advisory body based on race, color or national origin
- Selecting the location of a facility with the purpose or effect of excluding individuals, based on race, color or national origin

2. Section 504 of the Rehabilitation Act of 1973:

 Defines a person with a disability as a person who has a record of having, or is regarded as having a *physical or mental impairment* which *substantially limits* one or more *major life activities*.



Section 504 of the Rehabilitation Act of 1973 continued:

Grant recipients having 50 or more employees <u>and</u> receiving \$25,000 or more from the Justice Department must also do these three things:

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

3. <u>Title II of the Americans with Disabilities Act of</u> <u>1990</u>

• Applies to all public entities, regardless of whether they receive federal financial assistance.

Public entities with 50 or more employees must designate a disability coordinator and adopt grievance procedures, requirements that are similar to those in Section 504 of the Rehabilitation Act on the previous pages.

4. Age Discrimination Act of 1975:

- Prohibits age discrimination in the delivery of services or benefts
- This statute does not apply to age discrimination in employment.
- Prohibits Federally funded organizations from discriminating against *persons of any age* in its programs and activities
- (The Equal Employment Opportunity Commission EEOC- enforces the Age Discrimination in Employment Act, which prohibits employment discrimination against persons over the age of 40)

5. <u>Title IX of the Education Amendments of 1972:</u>

• Applies to Grant Recipients who operate educational programs and activities, and bars discrimination on the basis of sex.

Title IX requires that recipients do the following three things:

- 1. Appoint a coordinator
- 2. Implement a grievance procedure for filing Title IX complaints; and
- 3. Notify potential program beneficiaries that the recipient does not discriminate on the basis of sex.

6. <u>Omnibus Crime Control and Safe Streets Act</u> of 1968:

"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 be denied *employment* in connection with any programs or activity funded in whole or in part with funds made available under this chapter."

The Juvenile Justice and Delinquency Prevention Act of 1974 adopts these protections by reference to the Safe Streets Act.

7. Federal Victims of Crime Act (VOCA):

• VOCA adds an additional protected class:

"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".

Other statutes use the term *disability* rather than *handicap*, and that is the preferred word.

8. Violence Against Women Act (VAWA):

VAWA adds additional protected classes:

"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 the benefits of, or be subjected to discrimination under any program of 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. 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 sexspecific programming."

Special Condition on each Grant Agreement issued to a Grantee

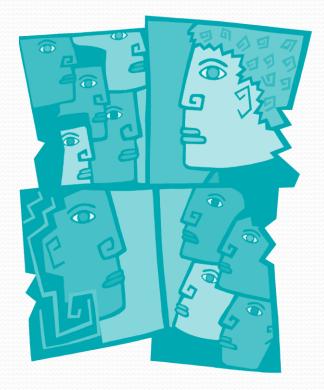
"It will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789d); the Victims of Crime Act (42 U.S.C. 10604(e)) ; the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. 5672(b); the Violence Against Women Act (42 U.S.C. 13925(b)(13)); 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."

Protected Class: Race

- American Indian or Alaskan Native
- Native Hawaiian or Other Pacific Islander
- Black or African American
- Asian
- White

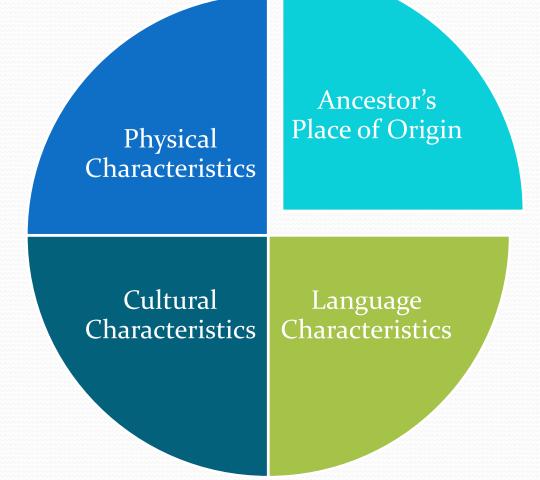
Hispanic /Latino: Is not a race, it is an ethnicity

Protected Class: Color Discrimination



Preference for or aversion to persons of different skin colors, regardless of whether the person is in the same racial or national origin group

Protected Class: National Origin





Protected Class: Sex Discrimination Can Occur Between:

Protected Class: Disability Definitions

- Mental Impairment: includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- Physical Impairments: any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following systems: Neurological, Musculoskeletal, Special Sense Organs, Respiratory, Speech Organs, Cardiovascular, Reproductive, Digestive, Genito-Urinary, Hemic Lymphatic, Skin, Endocrine.

Disability Definitions

- Substantially Limits: means the individual must be unable to perform, or be significantly limited in the ability to perform an activity compared to an average person in the general population. Courts have looked at *three factors* in determining whether someone is substantially limited:
 - 1. Extent: its nature and severity
 - 2. Duration: How long it will last or is expected to last
 - 3. Impact: Its long term impact or expected impact

Disability Definitions

• Exclusions:

- A person who currently uses illegal drugs is not protected by the ADA
- Homosexuality and bisexuality are not impairments and are therefore not disabilities covered by the ADA

Employment Discrimination

Five Forms of Employment Discrimination:

- 1. Disparate Treatment
- 2. Disparate Impact
- 3. Harassment
- 4. Failure to Accommodate
- 5. Retaliation

Disparate Treatment

- Consists of *intentional discrimination* where an employer deliberately takes an adverse action against an employee, or denies services or benefits, based on:
 - Race
 - Color
 - National origin
 - Sex
 - Religion
 - Disability
 - Sexual Orientation
 - Gender Identity

How Do You Prove Intentional Discrimination?

- Direct Evidence
- Indirect Evidence, such as:
 - Similarly situated people of a different class were treated differently than the complainant
 - Evidence of bias
 - False explanation for the differential treatment
 - Statistical evidence

What is Disparate Impact?

Disparate (or Adverse) Impact occurs when an employer has a policy or practice which has the *effect* of excluding employees of a particular race, color, sex, national origin, religion, or disability.

Adverse Impact

Evidence of Adverse Impact:

- The Four-Fifths Rule: When a policy or procedure has a selection rate for any protected class that is less than 4/5ths (80%) of the rate for the group with the *highest* rate of selection
- If a Policy has an Adverse Impact:
- Choose an alternative with less adverse impact
- The policy or practice may still be used if *job related* and consistent with *business necessity*

Adverse Impact Examples

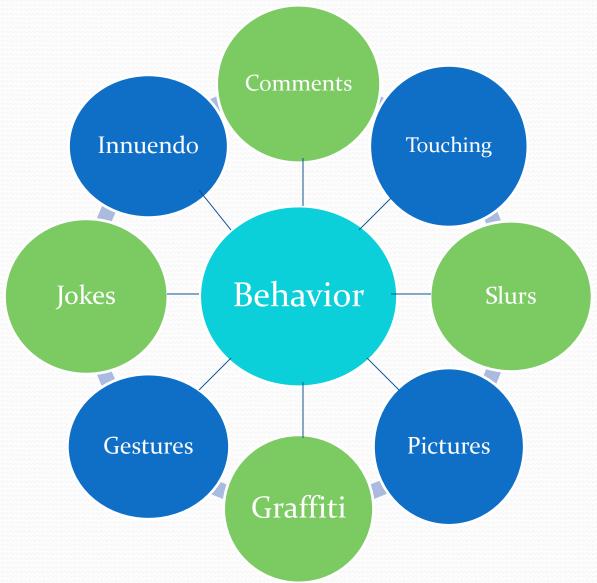
The following are examples of employment policies which have been found to cause an adverse impact in specific situations:

- 1. Minimum height requirements
- 2. Physical agility tests
- 2. "No beard" policies

What is Harassment?

Harassment is behavior which creates a hostile work environment for individuals *because of* their race, sex, color, national origin, religion, or disability.

What is Harassment?



What Makes a Work Environment Hostile?

- A stray remark is *not enough* to constitute a hostile work environment
- The harassment must be *sufficiently severe or pervasive* to alter the conditions of employment

Determining Severity or Pervasiveness – Six Factors

- Use a *reasonable person standard* to determine the following:
- 1. Was the conduct verbal or physical or both?
- 2. How frequently was the conduct repeated?
- 3. Was the conduct hostile or merely offensive?
- 4. Was the harasser a co-worker or supervisor?
- 5. Did others join in the harassment?
- 6. Was the harassment directed at more than one individual?

What Can an Employer Do About Unlawful Harassment?

Take Preventative Action

- Develop an explicit policy regarding harassment
- Regularly train all employees
- Develop effective sanctions
- Develop a complaint procedure designed to:
 - Protect victims and witnesses against retaliation
 - Encourage complaints
 - Ensure confidentiality

What Can an Employer Do About Unlawful Harassment?

Take Remedial Action

- Promptly and thoroughly investigate all complaints of harassment
- Take immediate action and appropriate corrective action reflecting the severity of the conduct
- Restore lost employment benefits or opportunities
- Discipline the offending employee or supervisor
- Follow up with the complainant to ensure there has been no retaliation

Accommodation: Religion & Disability

- An employer must make a reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability
- An employer must make a reasonable accommodation to the known religious beliefs or practices of an applicant or employee

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
 - Victims of Crime Act of 1984
 - Violence Against Women Act (VAWA) of 1994

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

Discrimination in Delivery of Services

Whenever a service is provided, there are potential beneficiaries, and those *beneficiaries* must be treated equally regardless of race, sex, national origin, age, color, disability, or religion

- Think of a program in which you are involved that receives federal funding:
 - Who are the potential beneficiaries?
 - What are the potential civil rights issues?

Civil Rights Laws & American Indians: An Important Distinction

Recipient

When *Tribes* receive Federal financial assistance, they are *not subject to* the enforcement of *Federal Civil Rights Laws* when they function as an employer; <u>tribes may be responsible as a</u> <u>provider of services.</u>

Beneficiary

American Indians, as employees or as beneficiaries of a non-Tribal organization receiving Federal financial assistance are protected by Federal Civil Rights Laws.

Civil Rights Laws & American Indians

The following protected classes are of particular importance for American Indians and Alaska Natives:

- Race
- National Origin
- Religion

Civil Rights Laws & American Indians

- Definition of American Indian for Civil Rights protections:
 - An employee would be entitled to protection of Title VII against employment discrimination regardless of his percentage of Native American ancestry if 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 associations. One does not have to prove bloodlines or show tribal membership to be eligible for protection under Federal Civil Rights Laws.

Civil Rights Laws & American Indians

- Discrimination in employment on the basis of membership in a particular Indian tribe (e.g. favoring members of the Navajo Tribe over members of the Hopi Tribe) constitutes national origin discrimination in violation of Title VII
- A State may be discriminating against American Indians if the State has implemented a policy of denying funding to Tribes, based on Tribes having received or having direct access to Federal Financial Assistance

- A person with *Limited English Proficiency* (LEP) has a first language other than English and a limited ability to read, speak, or understand English
- National Origin discrimination includes discrimination on the basis of LEP
- Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important benefits, rights, programs, information and services
- More information is available at <u>www.lep.gov</u>

To avoid discrimination against LEP persons, recipients must do the following:

- 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 <u>Reasonable Steps</u>: Four 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 services provided by the program
- 4. The *resources* available to the recipient

Limited English Proficiency Language Services

Oral Language Services

- Bilingual Staff: Direct foreign language communication by fluent personnel
- Interpreters: Ensure interpreter competency. Usually family members, friends, and uncertified coworkers are not appropriate

Translation

- Translation of vital written documents into the language of the LEP person.
- How vital a document is depends on the importance of the document and the consequence to the LEP person if the information is not provided accurately or in a timely manner.

Five Elements of a written LEP Plan:

- 1. A process for identifying LEP persons who need language assistance
- 2. Identifying ways in which language assistance will be provided
- 3. Training for staff
- 4. Monitoring and updating the LEP policy
- 5. Providing notice to LEP persons

DOJ Regulations issued for Faith- Based Organizations (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.

Equal Employment Opportunity Plan (EEOP)

- An EEOP is a comprehensive document which (1) analyzes an agency's workforce in comparison to relevant labor-market data, (2) analyzes an agency's employment practices to determine their impact on the basis of race, sex, or national origin, and (3) is a tool to identify possible problem areas where employment discrimination may be happening.
- Certain agencies must develop, maintain, and, in some cases, submit an EEOP to o the Office for Civil Rights. Specifically:
 - Non-Exempt Grantees/Subrecipients:
 - For-profit and government agencies having 50 or more employees and receiving through an individual grant more than \$25,000
 - Required to file an EEOP with OCR -<u>https://ojp.gov/about/ocr/eeop.htm</u>
 - The Division of Criminal Justice, Form 30, a certification included with your grant contract, describes the requirements for an EEOP, and contains additional important civil rights information

Equal Employment Opportunity Plan (EEOP) - continued

Then If	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

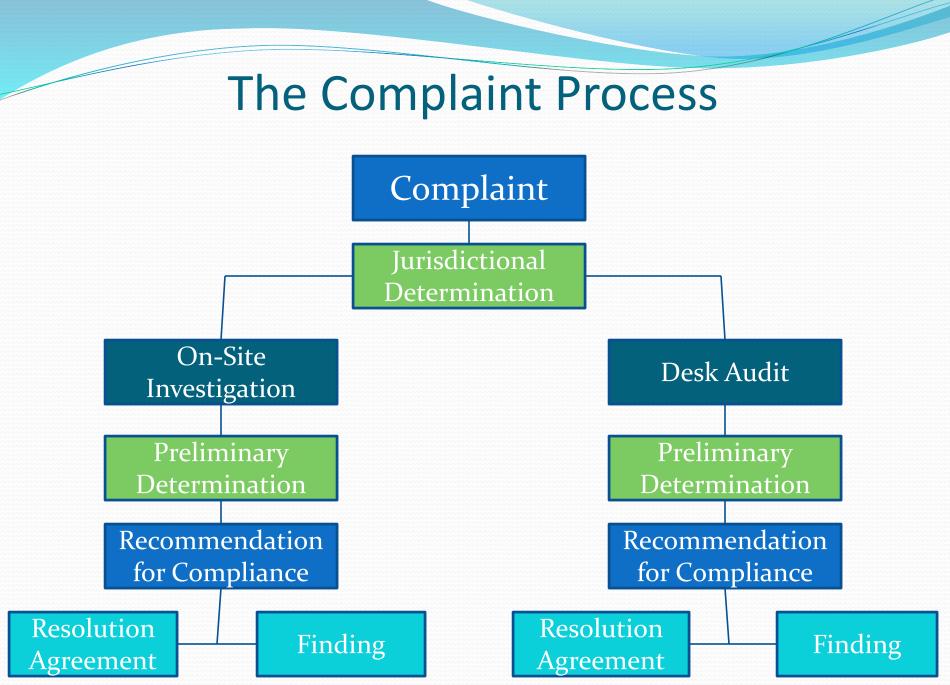
Prepare and Submit EEOP and Certification at <u>https://ojp.gov/about/ocr/eeop.htm</u>

The Office for Civil Rights (OCR) at the Department of Justice enforces applicable Civil Rights laws.

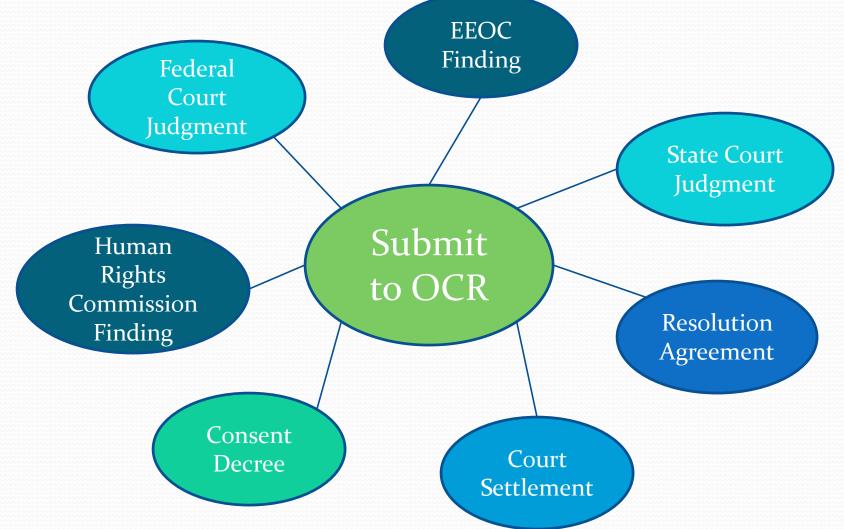
- The Office for Civil Rights is different than the Civil Rights Division of the U.S. Department of Justice, which often enforces civil rights through the court system
- The Office for Civil Rights is directly connected to the funding components of the Justice Department, such as the Office for Justice Programs.
- The Office for Civil Rights enforces civil rights exclusively through an administrative process

Methods of Civil Rights Enforcement by OCR

- Providing technical assistance
- Investigating administrative complaints of discrimination
- Conducting compliance reviews
- Reviewing adverse findings of discrimination against a recipient
- Reviewing Equal Employment Opportunity Plans



Funded Agencies are to submit Findings of Discrimination to OCR



Summary Checklist for Civil Rights Obligations

- Review non-discrimination policies and procedures to assure coverage of all protected classes
- Notify both employee and your program beneficiaries (clients) of nondiscrimination policies, and how to file a complaint
- Take reasonable steps to provide persons of limited English Proficiency meaningful access to services
- Submit to DCJ and/or OCR adverse findings of discrimination from a court or administrative agency after a due-process hearing
- Formulate an Equal Employment Opportunity Plan, if required to do so.
- Designate a coordinator to handle discrimination complaints and adopt grievance procedures, if required to do so.

Continued on next page

Summary Checklist for Civil Rights Obligations (continued)

- Have written procedures in place for receiving discrimination complaints from employees, and from program beneficiaries;
- Comply with Justice Department Executive Orders and regulations applicable to Faith-Based Organizations
- Ensure that project staff understand their responsibilities regarding civil rights

Resources:

The Office for Civil Rights offers many technical assistance resources on its website at https://ojp.gov/about/offices/ocr.htm, including a 6section training video and/or written transcript containing additional detail beyond this training. Some or all of this training may be useful to you.

Questions may be address to OCR at their website, or by contacting the *Office for Civil Rights*; Office for Justice Programs; U.S. Department of Justice; 810 7th Street N.W., Washington, D.C. 20531. Telephone (202) 307-0690; TTY at (202) 307-2027. Email at <u>askOCR@ojp.usdoj.gov</u>.

Attributions and Disclaimer

- This presentation was developed through the combination of power point materials provided by the State of Minnesota, and information from the 6-part civil rights training provided at the website of the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice.
- Errors and omissions are the responsibility of the Division of Criminal Justice.