

Office for Civil Rights Acceptances 2014

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

The DOJ regulation, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38, requires State Administering Agencies (SAAs) to treat faith-based organizations the same as any other applicant or subgrantee. The regulation prohibits SAAs from making awards or grant administration decisions on the basis of an organization's religious character or affiliation, religious name, or the religious composition of its board of directors.

The regulation also prohibits faith-based organizations from using financial assistance from DOJ to fund inherently (or explicitly) religious activities. While faith-based organizations can engage in non-funded inherently religious activities, they must hold them separately from the program funded by DOJ, and subgrantees cannot compel beneficiaries to participate in them. The Equal Treatment Regulation also makes clear that organizations participating in programs funded by DOJ are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. For more information on the regulation, please see OCR's website at http://www.ojp.usdoj.gov/about/ocr/equal_fbo.htm.

SAAs and faith-based organizations should also note that the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, 42 U.S.C. § 3789d(c); the Victims of Crime Act of 1984, as amended, 42 U.S.C. § 10604(e); the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. § 5672(b); and VAWA, Pub. L. No. 113-4, sec. 3(b)(4), 127 Stat. 54, 61-62 (to be codified at 42 U.S.C. § 13925(b)(13)) contain prohibitions against discrimination on the basis of religion in employment. Despite these nondiscrimination provisions, 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 subgrantees from considering religion in employment decisions. Please consult with OCR if you have any questions about the regulation or the application of RFRA to the statutes that prohibit discrimination in employment.

****New for 2014** 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 http://www.ojp.usdoj.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 EEOP (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 EEOP Requirement

If your organization has less than fifty employees or receives an award of less than \$25,000 or is a nonprofit organization, a medical institution, an educational institution, or an Indian tribe, then it is exempt from the EEOP requirement. To claim the exemption, your organization must complete and submit Section A of the Certification Form, which is available online at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>.

If your organization is a government agency or private business and receives an award of \$25,000 or more, but less than \$500,000, and has fifty or more employees (counting both full- and part-time employees but excluding political appointees), then it has to prepare a Utilization Report (formerly called an EEOP Short Form), but it does not have to submit the report to OCR for review. Instead, your organization has to maintain the Utilization Report on file and make it available for review on request. In addition, your organization has to complete Section B of the Certification Form and return it to OCR. The Certification Form is available at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>.

If your organization is a government agency or private business and has received an award for \$500,000 or more and has fifty or more employees (counting both full- and part-time employees but excluding political appointees), then it has to prepare a Utilization Report (formerly called an EEOP Short Form) and submit it to OCR for review within sixty days from the date of your award. For assistance in developing a Utilization Report, please consult OCR's website at <http://www.ojp.usdoj.gov/about/ocr/eeop.htm>. In addition, your organization has to complete Section C of the Certification Form and return it to OCR. The Certification Form is available at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>.

To comply with the EEOP requirements, you may request technical assistance from an EEOP specialist at OCR by telephone at (202) 307-0690, by TTY at (202) 307-2027, or by e-mail at EEOSubmission@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 http://www.ojp.usdoj.gov/funding/other_requirements.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

In February 2009, an attorney from OCR visited PGR and provided an OCR Training PowerPoint, which is available on the PGR website at www.isp.idaho.gov/pgr/OCR/OfficeforCivilRights.html. All subgrantees must review this training presentation, in addition to reading and complying with these acceptances. A link to the six (6) training programs provided by OCR is also posted on this webpage.

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. 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.

PROCEDURES FOR RESPONDING TO EMPLOYMENT AND SERVICES DISCRIMINATION COMPLAINTS FOR IDAHO STATE POLICE PLANNING, GRANTS, AND RESEARCH SUBGRANTEES

I. PURPOSE.

The purpose of this procedure is to provide written guidelines for Idaho State Police (ISP) Planning, Grants, and Research (PGR) employees when they receive a complaint alleging employment or services discrimination from employees, applicants, clients, customers, program participants or consumers of a PGR subgrantee implementing funding from the U.S. Department of Justice (DOJ).

ISP is designated as the State Administering Agency (SAA) for specific federal grants awarded by DOJ. These grants include the Edward Byrne Memorial Justice Assistance Grant, the STOP Violence Against Women Grant, the Sexual Assault Services Program, and the Residential Substance Abuse Treatment Grant. ISP is also the fiscal agent for the State of Idaho for the Project Safe Neighborhoods Grant. These grants are managed by PGR and passed through to state, local, and tribal governments, as well as faith-based and non-profit organizations (referred to in these procedures as external PGR subgrantees). Several ISP departments also receive DOJ pass-through funds (referred to in these procedures as internal ISP subgrantees).

II. POLICY.

All individuals have the right to participate in programs and activities operated by PGR and PGR subgrantees, regardless of race, color, national origin, sex, religion, disability and age. All complaints of discrimination, regardless of where reported or from whom, are taken seriously. PGR will ensure that they and their subgrantees are in compliance with the following statutes and regulations:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin in the delivery of services (42 U.S.C. § 2000d), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart C;
- The Omnibus Crime Control and Safe Streets Act of 1968, which prohibits discrimination on the basis of race, color, national origin, religion, or sex in the delivery of services and employment practices (42 U.S.C. § 3789d(c)(1)), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart D;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (29 U.S.C. § 794), and the DOJ implementing regulations at 2 C.F.R. Part 42, Subpart G;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (42 U.S.C. § 12132), and the DOJ implementing regulations at 28 C.F.R. Part 35;
- Title IX of the Education Amendments of 1972, which prohibit discrimination on the basis of sex in education programs (20 U.S.C. § 1681), and the DOJ implementing regulations at 28 C.F.R. Part 54;

- The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services (42 U.S.C. § 6102), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart I; and
- The DOJ regulations on the Equal Treatment for Faith-Based Organizations, which prohibit discrimination on the basis of religion in the delivery of services and prohibit organizations from using DOJ funding on inherently religious activities (28 C.F.R. Part 38).

These laws also prohibit ISP and subgrantees from retaliating against an individual for taking action or participating in action to secure rights protected by these laws.

III. COMPLAINT PROCEDURE: EXTERNAL PGR SUBGRANTEES.

1. Any employee, applicant, client, customer, program participant or consumer of an external PGR subgrantee may report allegations of discrimination or retaliation.

2. Allegations of discriminatory or retaliatory conduct by an external PGR subgrantee should be reported in writing, via regular US mail, or via email, to PGR's Grants/Contracts Management Supervisor:

Grants/Contracts Management Supervisor
ISP Planning, Grants and Research
700 S. Stratford Drive
Meridian, Idaho 83642
pgr@isp.idaho.gov

3. The complaint of discrimination or retaliation by an external PGR subgrantee must include:

- a. The complaining party's name, address, telephone number and email address; and
- b. An explanation of the conduct complained of, identity of the subgrantee and individuals involved, including any witnesses to that conduct, and where and when such conduct occurred.

4. Within 10 working days of PGR's receipt of an employment discrimination complaint, the PGR Grants/Contracts Management Supervisor will refer it to the U.S. Equal Employment Opportunity Commission at the following address:

U.S. Equal Employment Opportunity Commission
San Francisco District Office
350 The Embarcadero
Suite 500
San Francisco, CA 94105-1260

5. Within 10 working days of PGR's receipt of a services discrimination complaint, the PGR Grants/Contracts Management Supervisor will refer it to DOJ, Office of Justice Programs, Office for Civil Rights (OCR) at the following address:

Office for Civil Rights
Office of Justice Programs
U.S. Department of Justice
810 7th Street, N.W.
Washington, DC 20531

A complainant may also file a written complaint directly with OCR. The PGR Grants/Contracts Management Supervisor will also serve written notice to the complaining party, via regular US mail or via email, that the report was received and forwarded to OCR. Notice is effective upon date of postmark or transmission of email. PGR will not investigate any complaints of discrimination.

6. Allegations of discrimination or retaliation may be reported by the victim or by other persons aware of the discriminatory or retaliatory behavior.

7. The complaint should be made as soon as possible upon the occurrence of the discriminatory or retaliatory behavior, but generally must be made within one (1) year.

8. If the allegation involves a pattern of discriminatory or retaliatory behavior, the complaint should be made as soon as possible, but generally must be made within one (1) year from the date of the most recent occurrence.

9. The complaint will be handled through the most confidential and direct means possible.

10. If a complaint alleging discrimination or retaliation is received by a subgrantee, the subgrantee may investigate and respond directly to the complaining party in writing, refer the report to PGR or refer the report directly to OCR. Whichever option the subgrantee chooses, notification must be sent to the complaining party in writing, via regular US mail, or via email, within 10 working days. If the complaint is referred to OCR, a copy of the complaint must be forwarded to PGR.

IV. COMPLAINT PROCEDURE: INTERNAL ISP SUBGRANTEES.

1. Any employee, applicant, client, customer, program participant or consumer of an internal ISP PGR subgrantee may report allegations of discrimination or retaliation.

2. Allegations of discriminatory or retaliatory conduct by an internal ISP PGR subgrantee should be reported to:

Idaho State Police
Human Resources
700 S. Stratford Drive
Meridian, Idaho 83642
(208) 884-7317

3. Any necessary investigation is conducted in accordance with ISP procedure 03.01 Incident Review and Administrative Investigation.

4. All ISP employees receive annual discrimination training which they attest to as part of the employee evaluation process. Documentation is maintained in each employee folder according to ISP procedure 03.18 Sexual Harassment and Illegal Discrimination.

5. A complainant may also file a written complaint directly with OCR at the address listed in Section III.5. of this procedure.

V. PROCEDURE DISSEMINATION.

All PGR subgrantees will be notified of the subgrantee discrimination procedure via a message on the PGR Grants Management System (GMS). The procedure will be posted on the OCR page of the PGR website (www.isp.idaho.gov/pgr) and under the Administrative Guide document category in GMS. Subgrantees will be required to confirm knowledge of this procedure as a condition of their subgrantee award. The Federal Civil Rights Compliance Checklist is incorporated into ISP's monitoring plan. The checklist addresses written subgrantee policies and procedures for responding to discrimination complaints that employees, applicants, clients, customers, program participants or consumers file directly with the subgrantee. The Grants/Contracts Management Supervisor provides information to PGR grant managers on their responsibilities under this subgrantee discrimination procedure.