Kansas Crime Victims' Rights Conference
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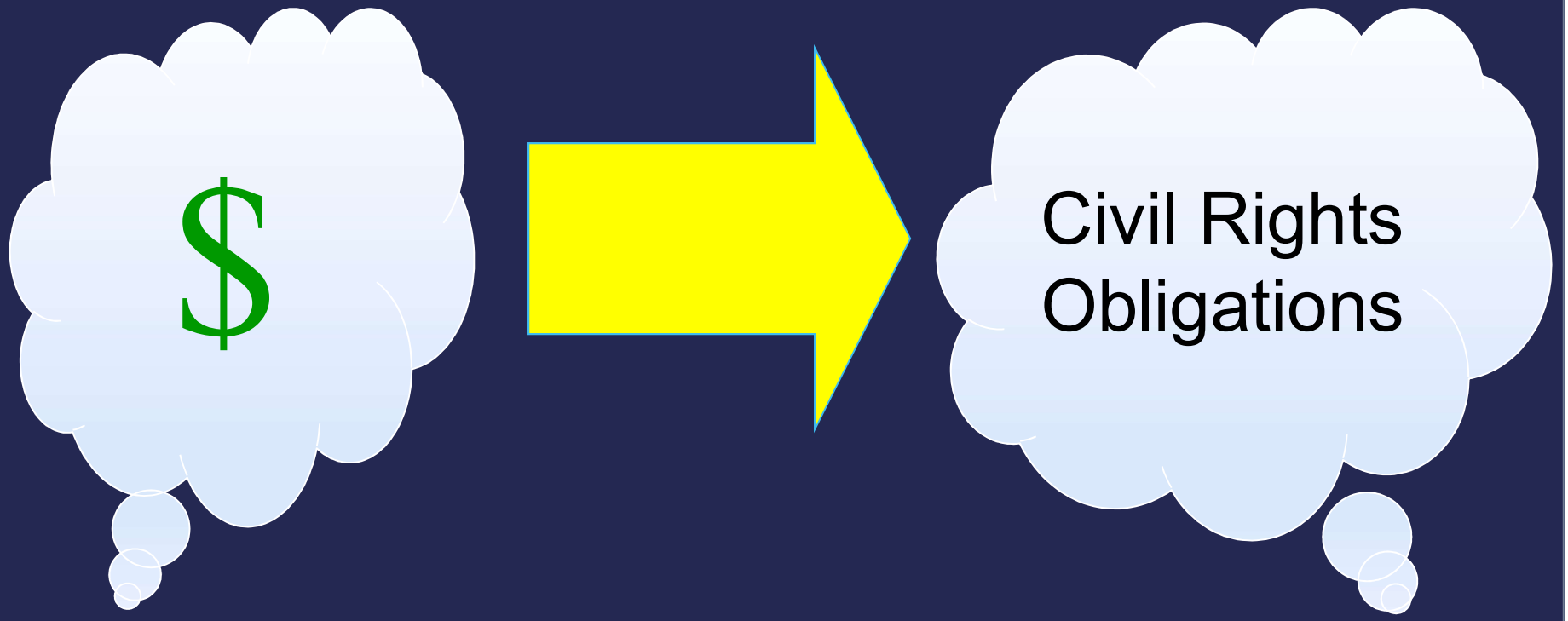
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Civil Rights
Obligations

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

The Office for Civil Rights Enforces

- Age Discrimination Act of 1975
  → Age
- Title IX of the Education Amendments of 1972
  → Sex in educational programs
- Program Statutes (e.g. VAWA, Safe Streets Act, VOCA)
  → Race, color, national origin, sex, religion, disability, sexual orientation, or gender identity

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.

Who is Subject to These Laws?

Examples:

If a legal aid organization receives federal funds and uses the funds to operate a particular project, all of the activities of the organization are covered, and not just the federally-funded project.

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

Race
Color
National Origin
Religion
Sex
Disability
Age
Sexual Orientation
Gender Identity

Victims of Crime Act

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.

34 U.S.C. § 20110(e).

VAWA Reauthorization Act of 2013

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)

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

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

Comparable Services

Fact-specific inquiry, consider:

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

VAWA Reauthorization Act of 2013 Continued

What is Gender Identity?

"Actual or perceived gender-related characteristics"
(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 services 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 docs

Do not inquire into surgery or other medical interventions

The Statutes that OCR Enforces Prohibit Discrimination In

Employment Practices

and/or

Delivery of Services

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.

A law enforcement agency fails to take steps to ensure effective communication with a deaf individual during an interrogation.

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 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 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.

Try a Scenario

A shelter for abuse victims receives OVW 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.

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 38.1(f) & 38.2(f)

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 Prevent LEP Discrimination, 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

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 oral language services

Insure Interpreter Competency

Usually family members, friends, and uncertified co-workers are not appropriate, particularly in judicial proceedings.

and

Provide translation of written materials

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?

- A prosecutor's office requires that a Korean-speaking LEP victim of abuse bring her own interpreter to all appointments with the office.
- A legal aid organization automatically sends all Spanish-speaking prospective clients to another organization that specializes in providing services to the Hispanic community.
- A court relies upon an English-speaking friend of an LEP individual to provide interpretation during a hearing.

Have these persons 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

Also . . .

NO RETALIATION!

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

Requirement 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

Submission of EEOP

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

Monitoring of Subgrantees

- The Kansas Governor's Grant Program must monitor its subrecipients' compliance with civil rights laws, including:
  - Ensure that subrecipients complete an EEOP Certification Form and submit certification form and EEOP (if required) to the OCR.
  - Ensure that subrecipients provide notification to employees and beneficiaries that the subrecipient does not discriminate and that employees and beneficiaries have a right to file a complaint with the Kansas Governor's Grant Program or the OCR.
  - Ensure that subrecipients have procedures in place for receiving and processing discrimination complaints from employees and beneficiaries.
  - Ensure a subrecipient has a Section 504 Coordinator if it meets the employee and funding threshold.
  - Ensure that subrecipients provide meaningful access to their services to LEP individuals.
  - Ensure that subrecipients comply with the regulations relating to FBOs (28 C.F.R. pt. 38).

Q&A

Resources

- **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: www.ojp.usdoj.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

www.ojp.usdoj.gov/ocr