

TAMMY BAXTER: Good afternoon and welcome everyone to today's training. Again, my name is Tammy Baxter. I am Senior Counsel with the Office for Civil Rights at the Office of Justice Programs, US Department of Justice. And with me here today is my colleague, Attorney Advisor Kim Tolhurst. We've been invited today to speak to you about civil rights laws, requirements, and obligations that attach to DOJ funding, in which grantees and sub-grantees must comply. For today's training, we expect it to be about 90 minutes. And the format will begin with, I will provide an overview of the Office for Civil Rights and the work that we do. I'll then turn the presentation over to Kim, who will go over the first half of our training slides. I'll pick up the second half of the training slides. And then we'll end our presentation with the question-and-answer session. With regard to questions, I kindly ask that you hold those until the end of our presentation. And I also understand after providing these presentations, many, many times over the years, that most of your questions may be very fact-specific, specific to the type of agency or entity that you are, the type of funding that you're receiving, or the services that you're providing, or to whom you're providing these services. With that in mind, we've also included our direct contact information at the end of the presentation. And I encourage you to reach out to us following this presentation to receive one-on-one personalized technical assistance, to ensure that you get the information that you need.

With that said, I'm going to start by telling you a bit about the Office for Civil Rights, or OCR. We are located within the Office of Justice Programs, or OJP at the US Department of Justice. OJP is the grant-making division of the Department of Justice and is responsible for administering tens of millions of grant dollars to all types of grantees or sub-grantees throughout the nation and the territories. The types of grantees vary widely. It could be non-profits, agencies such as those in attendance today, it also could represent units of local county or state governments, such as work systems, Department of Corrections, Juvenile Justice Facilities, possibly a state's attorney, or District Attorney's Office, Public Defender's Office, as well as law enforcement agencies, whether it be a local law enforcement agency, a law enforcement agency at the county level, or a state police agency. OCR's responsibility with regards to all of these grantees and the receipt of funding is to ensure that the grantees and the sub-grantees are complying with the applicable civil rights laws, requirements, and obligations that attach to the receipt of that funding. Throughout this presentation, we'll go over those laws, the requirements, and obligations, and then tell you how OCR carries out its work. With that said, I'm going to turn the presentation over to my colleague, Kim.

KIM TOLHURST: Hello. Hi. I'm Kim Tolhurst. As Tammy said, I am an Attorney Advisor with the OCR. I will note I am so happy to be here, in part because long ago, I worked for a state coalition against sexual assault. I was their first attorney they were able to hire, and that was because of DOJ funding. I later worked at the National Battered Women's Justice Project, back when the Civil Division was in Washington, D.C., that position was also provided by federal funding. So, I have spent a lot of time on the recipient side of things with nonviolence against women issues. And today, now that I'm with the OCR, and on the other side, I'm going to tell you all what your obligations are.

Once you proceed with the funding, there are some civil rights laws we want to make sure that all of you are aware of and know how to comply with.

So, we're talking now about the responsibility of State Administering Agencies. And as you all, I'm sure, know, that is a component that receives federal assistance from DOJ. And then make sub-awards to other state agencies, units of local government, such as county or municipal agencies, Native American Tribes, and nonprofit organizations. So, sub-recipients are organizations that the SAA funds with those DOJ resources. And the SAA has to ensure both its own compliance and the compliance of its sub-recipients, via monitoring their civil rights obligations. And there are a lot of ways that the SAAs need to ensure their own compliance, including providing LAP — meaningful access, submitting signs of discrimination to the OCR. There's a long list and I'm not going into them in detail, because that is part of Tammy's presentation. But she will be giving you guidance on how SAAs can ensure that they are in compliance overall. What I'm going to start with is going into some specific laws that the OCR enforces.

And before we start going over the content of those laws, and I know there's a slide on this later, but I think it's really useful to dive into laws, first talking about the actual protected classes that these laws are going to address. So, we're going to stay on this slide, but those protective classes are race, color, national origin, disability, age, sexual orientation, and gender identity. Those seem as sort of basic fundamental words, but as you're providing services, it's really important to think about what those words mean. For example, if there were a dark-skinned African American woman, who was applying at an organization that was only hiring light-skinned African Americans, she may have a claim or a complaint that would be based on color. Another example of understanding these protected classes would be, if there's a national origin issue, it may include discrimination, based on language ability. So, protected classes are not cut and dry in the sense that, like most instances, everything is going to be unique and fact-based, fact specific.

So, think about that when you're thinking about the protected classes. And now, I'll start going over the statutes that you all must adhere to. And the first is, Title VI, which addresses race color and national origin. For that one, I'm going to read you the language specifically, "No person in the US shall, on the grounds 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." The reason I took the time to read that actual language is that Title VI, back in 1964, really ended up serving as a model. And several subsequent statutes prohibiting discrimination, including Title IX, based on sex, and Section 504, which addresses disabilities, they used Title VI as a model. So, that language about the exclusion and denial of benefits is something that really travels and applies to many of the statutes that we're going to discuss today.

The next is Section 504 of the Rehabilitation Act, which covers disability. And there's a great deal of overlap with the following statute, Title II of the Americans with Disabilities Act. So, under 504, it applies to institutions that receive funding from the federal

government, and of course, applies to all recipients of DOJ funding. When recipients get at least \$25,000 in DOJ funding, they have to designate a disability coordinator, they have to adopt grievance procedures, and provide notice of non-discrimination date based on disability. Again, some of which we'll hear more from Tammy. Under Title II of the ADA, this applies to public entities. So, it requires that recipients that are public stay in local entities, that have 50 or more employees, designate a disability coordinator, and adopt grievance procedures. Later, I will be going over more of the actual substantive requirements of disability statutes as we move on. But basically, if you're receiving funding from DOJ, you're going to have to comply with both Section 504 and Title II of the ADA. We will talk about that a little more later.

So, the next statute is the age discrimination statute, the Age Discrimination Act of 1975. And what's really important to note here is that unlike what some who hear the term Age Discrimination Act might assume, it does not focus on older Americans. This is something that the Age Discrimination in Employment Act does. But for the Age Discrimination Act, it protects age in general terms by not defining an age group. So, that's a key point to think about. That's the most important thing I want you to know. There are some exceptions. When age is used by an organization, there are exceptions where they won't be accused of discrimination, and that is if the requirement they give is in a program or activity — the program recently takes into account age, as a factor necessary to the normal operation or achievement of any statutory objective of the program, or if the differentiation on age is made by an action, based on other reasonable factor. So, it might be based on the ability to lift something, depending on what the act is in the job that the person is handling, not necessarily based directly on their age.

Next, we're going to go over Title IX of Education Amendments Act of 1972 — that is based on gender. And I know that a lot of people when they hear Title IX, what jumps into their minds is sports. But make sure that you're aware that Title IX covers educational programs far more broadly than that. Another thing I want to note is that Title IX, the Education Department announced in 2021, that based on the Supreme Court decision, that discrimination on the basis of sex includes discrimination based on sexual orientation and based on gender identity. That was up in the air for a while, but the Supreme Court, and later, the Department of Education, made clear that gender identity and sexual orientation are also protected under Title IX. And the Supreme Court actually said that it was impossible to discriminate against the person based on their orientation or identity without discriminating on them based on sex.

Now, the next set of laws we're going to look at are Program Statutes, as the slide tells you, VAWA, Safe Streets Act, and VOCA. So, the Violence Against Women Act, which I'm sure you all are familiar with and have been trained on, creates supportive, comprehensive, cost-effective responses to domestic violence, sexual assault, dating violence, and stalking. The Safe Streets Act, which is officially called the Omnibus Crime Control and Safe Streets Act of 1968. Now, this law was designed to assist the state and local government in reducing incidents of crime and to appraise the effectiveness, fairness, and coordination of law enforcement in correctional systems.

Now, note that this is a long act and has multiple components. What the DOJ enforces is the non-discrimination provision. Again, “no person shall in any state, on the grounds of race, color, national origin, religion, or sex, be excluded from participation in, or denied benefits of, or subjected to discrimination under, or denied employment, in connection with any programs funded in full or in part by this chapter.” And finally, VOCA, the Victims of Crime Act. It helps victims manage financial costs of surviving a crime, including medical bills, counseling services, and loss wages. The non-discrimination provision addresses race, color, religion, national origin, handicapped, or sex. So, what you’ll notice here as I’m going over these statutes, each statute may be specific to one protected class or a certain set of a few of the protected classes, but by receiving this funding from DOJ, all of the grantees are going to have to look out for all the protected classes, because all of the statutes we’re going over will apply to you.

So, who is protected by these laws? What is the program or activity? It is a program that receives financial assistance from the DOJ. And it 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. I would say that we can go back a slide. To note, a particular project may be something that involves safety planning, or training, or other matters, or topics.

And actually, we can go on to the next slide. If a rape crisis center receives federal funds and uses the funds to operate a particular project, all of the activities of the organization are covered, not just the federally funded project. I’ll give you a more concrete example of that. Let’s say that you are a crisis center, and you get funding to, for example, you have advocates who are assisting survivors when they’re having their sexual assault evidence collected, in what a lot of states call rape kits. The funding may be just for that, but the rape crisis center provides other services, counseling, advocacy, legal assistance. Even though the funding might be just for the collection of evidence, the organization, all of those projects, legal assistance, advocacy, et cetera, all of those have to be covered by the non-discrimination laws. Conversely, if you want to think about what’s not covered, if a project of a county sheriff’s department receives federal funds, the entire sheriff’s department, just like the entire rape crisis center, is covered. But the sheriff’s department does not mean that other departments in the county are covered. And of course, any organization receiving federal financial assistance must require any sub-recipient to comply with all of these regulations, civil rights statutes. And this, again, is the protected classes. We went over that earlier, because I thought it was important to think about those classes as I was delving into the particular statutes. So, at the end, we can ask questions about these classes. But I think the point I was making earlier is that it’s really important to think about what this means. Many survivors, many beneficiaries that you’re serving will fall into one or often more of these protected classes. And so, multiple of the laws I’m going over, and the laws that Tammy will go over, will apply.

So, now, we’re getting in more specifically to the Violence Against Women Act. And you all, again, I’m sure, are well aware of the statute. I know that last week, you received training on the Reauthorization Act of 2022. I won’t read the whole slide, but I will stress

the fact that we have a gender orientation and the Hate Crimes Act or gender identity. The Hate Crimes Act defines gender identity as actual or perceived gender related characteristics. Actual orientation, it's not defined in many statutes, but OCR treats them as including heterosexual, homosexual, and bisexual. These are all sexual orientations. So, those are examples, but not necessarily exclusionary.

So, we're talking now about what happens if there is sex segregation or sex-specific programming. Sometimes, those are necessary for the essential operation of a program. So, nothing in the non-discrimination laws shall prevent a program from considering an individual's sex were necessary. We're going to talk more about this. If it is decided that sex-specific or sex segregated programming is necessary, there is still the requirement that the grantees provide comparable services to individuals who have been segregated. So, example might be, if there's a shelter that is small and doesn't allow for segregating male and female clients, they have to have an alternate location, and it must provide substantially equal benefits. This would include bathroom, kitchen facilities, access to food, et cetera. Again, let's say it's a small shelter, they don't have space to house a male separately from the females, and so they send the male to a nearby shelter. That may be fine as long as they're receiving similar services as I just listed, but the grantee, the original shelter, they still have other services that they can and should provide to that man who's been sent to another shelter. So, if the original shelter provides counseling, safety planning, et cetera, those services should still be offered to the male who came to the shelter and was relocated for safety reasons and space reasons in the original shelter.

I've already sort of touched on this — the Sex-Segregated Programming when they are receiving services in separate settings. Sex-Specific Programming is when the programming is designed differently for males and females. An example I can think of is I've seen programming to assist, for example, preventing attacks on campus. So, the training and preventing those attacks might be different if the potential victims of attack are female versus male. The programming might be slightly adjusted in practical ways, and that is allowable. Make sure in both scenarios, Sex-Segregated and Sex-Specific Programming, that the beneficiaries, meaning the clients you serve can choose the appropriate program based upon their gender identity. So, when we're looking at this, again, to use Sex-Segregation or different programs, it has to be essential to the operation of the program. And that has to be a fact-specific inquiry. So, looking into that, to make that inquiry, you have to look at the nature of the service. You have to look at the consequence to the beneficiaries of making the Sex-Segregated or Sex-Specific Programming. You have to look at literature for efficacy. Basically, that means, read about what works. And then the impact on transgender clients. All of these reasons provided — they cannot be trivial and based on convenience. And it's really important that they are not rooted in stereotypes.

For comparable services, which is essential, again, as in most things, it's a very fact-specific inquiry. You look at the nature and quality and duration of the service. You look at the relative benefits and theoretical modalities. Basically, this means: What are the forms and what are the design of services, and geographic location? So, if someone is

segregated, is the place that they're relocated — is it nearby? Is it a place that is truly accessible? That is really important to consider. Basically, these are reality checks. Are these truly comparable? So, comparable doesn't mean identical, but they must be of the same or similar quality and duration. And that's important to remember.

Gender identity, we went over earlier and, again, it's important to think about the person that you're serving, their view of their gender. And again, transgender, male, and female are all examples of gender identities. When you're serving transgender clients, again, assign them with services that correspond to the gender with which they identify. You have to think about their health and safety when you're making housing assignments. And again, consider their own views regarding their personal safety. This is key, don't isolate or segregate. Really important — don't make burdensome demands for identity docs. We don't want to look at their birth certificate. We don't want to ask what their driver's license says their gender is. And certainly, we don't want to ask them about surgical or any other medical interventions. Transgender clients need to be consulted on what they consider to be the services that they need.

Now, we're going to move on to Employment Practices, Delivery of Services. And we're giving some examples. Let's say a funded domestic violence clinic has a blanket policy of only providing services to female victims of domestic violence and not male victims. Or law enforcement agency fails to take steps to ensure effective communication with a deaf individual during interrogation. Or finally, a culturally based sexual assault services program primarily designed to provide services to Hispanic persons turns away a non-Hispanic individual seeking services. All of these are versions of discrimination. And on that top one, that relates to what we talked about. There may be reasons that the male victim could receive comparable services, but there can't ever be a blanket policy. We're going to move on now.

Outside of our looking at Violence Against Women Act and now, we're going to look at disability. Again, earlier I mentioned that Section 504 of the Rehabilitation Act and Title II of the ADA, both govern discrimination against handicapped or disabled individuals. This means any person who has a physical or mental impairment, which substantially limits one or more major life activity. And they have a record of impairment, or they're regarded as having such an impairment. I will note that the Title II regulations indicate broad coverage. So, disability is expansive. The question of whether an individual meets the definition of disability — it should not demand extensive analysis. And that is directly from regulations that come with statutes for DOJ. So, OCR will not demand extensive analysis over disability.

DOJ funded recipients have to provide reasonable accommodations. What's a reasonable accommodation? It can take many forms, but it must be an effective way of remedying the discrimination, and it must address an individual's limitations. What kinds of accommodations are included? They might include modification of rules, modification of policies or practices. It might mean removing architectural barriers. They might mean providing additional or changing forms of communication. They might mean using a different form of transportation barriers in a way that makes the transportation

accessible. It can also mean providing auxiliary aids and public service. So, that might mean a ramp, that might mean a wheelchair, it might mean an interpreter. There are a lot of different ways to make a reasonable accommodation, modification. And again, every case requires individual analysis. So, people with disabilities, they're not the same. And this is true even when they have the same disability, from person to person, the accommodation they need may not be identical. One person might need a cane, another might need a wheelchair. One person might need an ASL interpreter. Another person might have another form of understanding. So, never feel that the needs are identical, again, even when the disability on paper is the same. So, disability discrimination analysis — I think that we've gone through that enough to move to the next slide.

And now we'll try a scenario. A shelter for abuse victims receives OVW funds, and the shelter has a blanket policy that requires residents cannot take any prescribed psychotropic medication while staying at the shelter. I'm going to give you a moment to think about it. Is this an acceptable policy? The answer is 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. This needs to be an individual assessment. So, for example, I will note that psychotropic means drugs that affect a person's mental state. Xanax, for example, is a psychotropic medication. A blanket exclusion of such drugs is not appropriate. And again, you need to go person by person, need by need, rather than have an across-the-board rule.

Finally, I'm going to go for a little bit, as I assured you earlier, more about Section 504 of the Rehabilitation Act. Are we on to your slides now, Tammy? Am I moving this onto you yet?

TAMMY BAXTER: You could go ahead and take this slide just to close the loop on disability.

KIM TOLHURST: Okay. Good. Good. So, the recipient — I mentioned this earlier — if they have 50 or more employees and their assistance from DOJ financially is \$25,000 or more. And again, Tammy is going to go over the details of compliance, but they have to designate a Section 504 coordinator. They have to adopt grievance procedures. And they have to notify participants, beneficiaries, applicants, employees, unions, and organizations with collective bargaining agreements that the recipient does not discriminate on the basis of disability.

So, this is the end of my portion then. And at the end of the training, there should be time for questions. And Tammy is going to provide you all with contact information. I think she said earlier, it's often after the fact that you may have questions for us related to the unique services that you provide. So, you will get our phone numbers and our email addresses and can follow up with questions both today when Tammy is done speaking, but also next week, next month, going forward, you'll have contact info to ask us to elaborate more on these statutes and the ones that Tammy is going to go over as needed.

TAMMY BAXTER: Thank you, Kim. We're going to close the loop on Disability Discrimination. And I'm going to pick up with the protected class of religion and discrimination based on religion. I'd like to start with the definition here that we can think about. When we think about discrimination based on religion, and that would include all aspects of religious practice, as well as an individual's belief. A belief would include sincerely held moral or ethical beliefs of the individual. When we think about this area of the law, it can be a bit complicated, so these slides when we're speaking of religion, I'm going to highlight some things that I want you to, kind of, keep in your mind as a flag that may come up in the future, and then some specific information for organizations receiving DOJ funding that are considered Faith-Based Organizations, or FBOs.

Two broad points to begin our discussion about Faith-Based Organizations, again, or FBOs. The first is that government agencies must remove barriers for FBOs applying for government aid. The second point is that government agencies providing financial assistance must not discriminate either in favor of or against the Faith-Based Organization. The Department of Justice has specific regulations which address FBOs. And I'm going to point out some of that language here on the screen. These regulations can be found at 28 C.F.R. Part 38 and are titled Faith-Based and Other Neighborhood Organizations. And so, the first point I'd like to make is that for the regulation state, FBOs must not use direct funding to engage in explicitly religious activities. If they do engage in explicitly religious activities, those activities must be held separate in time or location from any of these federally funded activities and must also be voluntary for those participating or seeking services of the DOJ federally-funded activity or FBO. Another point that's highlighted here and found in the regulations is that FBOs may not discriminate against beneficiaries that are seeking their funded services. And so, they cannot discriminate against the beneficiary based on religion, their religious belief, a refusal to hold a religious belief, or refusal to participate in a religious practice that might be offered by the funded FBO.

Digging a little deeper into points that I like to make about FBOs, and again, those of you in the audience who might be an FBO or Faith-Based Organization, let's look now at FBO Regulations and the topic of employment. There are two statements on your screen, the first is that funded FBOs do not give up or forfeit Title VII's exemption from religious discrimination in employment. The next quote comes from our DOJ regulations that state, "Some Department programs, including FBOs, however, contain independent statutory provisions that require all grantees. And this would include FBOs that agree not to discriminate an employment on the basis of religion. Grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements." When thinking about these two statements, they are contradictory. And so, I want to go on and explain this contradiction specifically and how the department has addressed this for FBOs.

The department has determined that on a case-by-case basis, under the Religious Freedom Restoration Act, that may allow grantee FBOs to hire based on a religious preference. In this case, if an FBO does wish to engage in hiring based on a specific



religious preference, they must complete what is referred to as a Certificate of Exemption. Within that Certificate of Exemption, the FBO is going to certify a few things. The first is that it will offer all federally funded services to all qualified beneficiaries. The FBO will also certify that explicitly religious activities will be voluntary and kept separate from all federally funded activities. And the FBO is stating that 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. Should an FBO come to the conclusion that upon receipt of DOJ funding, that it does wish to hire based on religion but also not engage in the practice of religious discrimination, it should consult with its grantee office as well as complete the Certificate of Exemption certifying the points that are on the screen, and then file that certification through the JustGrants system.

Now, I'm going to turn to the Protected Class of National Origin Discrimination. This class discriminate protected class includes a sub-class of Limited English Proficiency, or LEP. A limited English proficient individual has a first language other than English and a limited ability to read, speak, write, or understand English. To prevent discrimination based on limited English proficiency, a DOJ-funded recipient must do a few things. First, they must take reasonable steps to ensure meaningful access to the programs, services, and information the recipients provide, and do so free of charge. The DOJ-funded recipient must also establish and implement policies and procedures for language assistant services that provide LEP persons with meaningful access. And we're going to unpack some of these highlighted terms over the next few slides.

Let's first start with reasonable steps and what are reasonable steps that a DOJ funding recipient should take. Well, in order to answer that, that's going to be specific to each funded agency and they can review what we refer to as a Four Factor Analysis. And upon answering the questions in the Four Factor Analysis, that will shape and inform what the funded recipient's reasonable steps are that they should take to ensure meaningful access. The first of the four factors is that the DOJ funding recipient should determine the number or proportion of LEP persons serviced or encountered in its eligible service population. Next, the grantee or sub-grantee should determine the frequency with which LEP individuals come into contact with the DOJ-funded program. The third factor that the grantee or sub-grantee should consider is the nature and importance of the program, activity, or service that they are providing through the DOJ-funded program. And lastly, the funding recipient should consider the resources that it has available. Upon conducting this Four Factor Analysis, the grantee should then be able to identify what steps that they can take in order to ensure meaningful access to their funded programs and services. Now, in terms of providing meaningful access, we think of, what is that? And that consists of Language Assistance Services. Language Assistance Services are broken into two broad categories. The first we think of is oral language services. And the second category would be written materials or providing translation of written materials. I'm going to talk first about the category of oral language services, and a point that you should keep in mind with regard to this is that grantees need to ensure the competency of interpreters that they use. The second point is that it-

-family members, friends, and uncertified co-workers are generally not appropriate to rely upon to provide interpretation services particularly in judicial proceedings.

With regard to the category of written materials and providing translation of written materials, over the years, many grantees have come to the OCR to ask, well, what is it that we need to translate? Is it everything? Everything that we have on a piece of paper? All the information that we convey? And how do we do that? In what language groups? Well, in order to assist grantees, the Department has established a few things. The first is that vital documents should be translated. And then to determine to which groups and which languages, the Department has what we refer to as the Safe Harbor Provision. And Safe Harbor Provision states that if 5% or 1,000, whichever is less of the LEP population, then vital documents must be translated for that group. If, however, that 5% number represents fewer than 50 persons, then only written notice of free written translation must be provided by the DOJ grantee.

So, let's talk about vital documents — what are those? I like to think about vital documents as anything that can be as an important write, or notice thereof, or lack thereof. So, for example, notice of attendance at a court proceeding. Your right to file a complaint that you've been discriminated in against in terms of seeking services from a DOJ-funded grantee, maybe an individual is before a funded court and requires reasonable accommodations, information regarding how to request those accommodations or even request an interpreter is something that could be considered a vital document. An example of what would not be a vital document might be a brochure or a pamphlet offered by a law enforcement agency, which discusses bicycle safety. So, you can see the difference in terms of how we weigh and assess vital documents, and then what rules or guides we use to determine when those should be translated.

Let's circle back to Meaningful Access. And I'd like to demonstrate what this is through a few different scenarios. I'll read each scenario and then we'll take a moment to think about that scenario to determine if the individual involved in this scenario was denied meaningful access. And our first scenario, a prosecutor's office requires that a Korean-speaking LEP victim of abuse bring her own interpreter to all appointments with the prosecutor's office. I'd like you to think about this scenario and then ask the question, was the Korean-speaking individual afforded meaningful access in this scenario? If your answer was no, you are correct. This scenario was an example of a failure of the prosecutor's office or the DOJ-funded agency to fulfill its obligation to provide a qualified interpreter for the LEP individual at no cost.

And a second scenario, a domestic violence shelter automatically sends all Spanish-speaking prospective clients to another organization that specializes in providing services to the Hispanic community. And thinking about this scenario, I'd like you to answer, were these individuals afforded meaningful access when they were forwarded on to the organization that specializes in providing services to the Hispanic community? Again, if your answer was no, you were correct. In that former example, it was a failure of the organization to provide services, including language assistance services necessary to ensure access to the shelter's programs based on an individual's Limited

English Proficiency, simply because there was another organization within the community that may have specialized in serving the Hispanic community, that didn't remove the responsibility of the DOJ grantee from actually providing meaningful access and services to those beneficiaries that approached them for access to their funded services.

And a third scenario, a court relies upon an English-speaking friend of an LEP individual to provide an interpretation during a hearing. And thinking about this scenario, do you believe that this person was afforded meaningful access? The answer would resoundly be no. This was an example of an impermissible use of a family member that may raise issues of competency, confidentiality, or conflict of interest. Using certified, qualified interpreter is especially critical in a legal setting. I had mentioned that there were two primary things that a grantee must do in terms of ensuring that they are providing and meeting the needs of those individuals who are Limited English Proficient. The first was ensuring meaningful access to their funded programs and then developing policies and procedures.

So, let's talk now about what a policy that addresses surveying LEP clientele may contain. Any policy is going to have five elements and they're going to be in a written narrative form. And the grantee or sub-grantee should be explaining the five elements that are listed in this screen. They should be able to set forth in their policy what their process is for identifying LEP persons who need language assistance. They also should be able to explain in this written policy the information that they have about the available language assistance measures, both oral interpretation and written translation, what those are, and how an individual can access those. The policy should also provide a narrative on how the grantee is training its staff, what types of training the staff is receiving to understand their obligation that they must ensure meaningful access to those individuals who are Limited English Proficient, to ensure that there is no discrimination based on either LEP under our protected class of National Origin Discrimination. The fourth element of the policy is that the DOJ funding recipient should be able to state what notice it's providing to its LEP persons about its obligation to provide meaningful access and its language assistance measures. And finally, the policy should have some explanation as to how the grantee is monitoring and updating its LEP policy to include who the contact person is at the DOJ-funded agency — is there a specific LEP coordinator, how that individual was reached, also what are the updates in the service population. Some communities may have seasonal workers that would impact the LEP communities that are served or might need assistance during certain times throughout the year. So, this fifth element is going to address that as well.

The next slide states no retaliation. And so, the point here is that under all the laws that the OCR enforces is they also provide protections for retaliation. Simply put, should an individual believe that they have been discriminated against based on one of the protected classes that fall under the laws we've discussed, and they engage in a protected right, such as filing a complaint that they believe they've been discriminated against based on a protected class, and then as a result, they experience an adverse event, they will be protected under retaliation and that is an area of the law in which

OCR also would investigate. And so, grantees should be mindful of that and the protections surrounding that.

At the beginning of the presentation, I stated that I would provide some information on how the OCR conducts its administrative enforcement work. And there are four primary tools listed on the screen, but there's actually a fifth. And I'll start with the fifth. And that is the provision of technical assistance. What we're doing here today, OCR spends a tremendous amount of time communicating with grantees and making sure that grantees, whether it be a grantee, a sub-grantee, a state administrative agency, that they understand what their civil obligations or requirements are and that they must comply upon receipt of DOJ funding. Other enforcement mechanisms that the OCR uses are complaints in our complaint process. With regard to complaints, the OCR receives thousands of complaints each year with--in which individuals are alleging that they believe that they have been discriminated against based on one of the protected classes either in an attempt to access services from a DOJ-funded agency or possibly in the context of their employment.

When the OCR receives these complaints, the first thing that we're doing is ensuring that the agency involved, or what we refer to as the respondent, is actually a recipient of DOJ funding over which the OCR has enforcement authority. If the agency involved is a recipient of DOJ funding, we then begin to look into the actual allegations to ensure that there is a protected class of discrimination that we have jurisdiction over and that the laws that we enforce are actually applicable. If we cross those hurdles, the matter will be assigned to an attorney who will take a look at the allegations and likely will request additional information from the complainant to better understand what they're alleging and the scenario that occurred to better inform our next steps. In some instances, we may then be reaching out to the DOJ-funded agency to seek more information about the specific claims that the complainant has presented to the OCR. We may generally ask the DOJ grantee or sub-grantee to simply respond to the allegation. We may be a bit more detailed and provide a series of specific questions that we need the DOJ grantee or subgrantee to respond to, to inform our opinion. Regardless, once we have the information that we need from both the complainant, as well as the respondent, where again, the DOJ-funded recipient, we will review all of that information and make a determination as to whether or not there has been a civil rights violation. If we would conclude that there were civil rights violation is at that point that the OCR would notify the recipient of funding and then we would ask them to work with us to come into what we refer to as voluntary compliance, to correct what appears to have caused the civil rights violation. Some examples could be a modification, change of, or implementation of a policy, which could address the violation. Other things could be simply providing training to staff. Thinking differently about how the services were provided, maybe there was no reasonable accommodation process available. Maybe there was the absence of an interpreter, which was needed for an individual who is Limited English Proficient. The compliance process could include any of those things or others. Once compliance is sought, then the matter would be considered closed with our office and possibly periodic updates and communication with the respondent just to make sure that all is going as agreed.

The next enforcement tool that the OCR uses would be what we refer to as Compliance Reviews. And these are broad-based investigations in which we are looking into all aspects of a DOJ funding recipient's program, anything from how they are receiving applicants for the services through their policies and procedures up to, and including, how they're disseminating the services. Generally, we're focusing on one protected class of discrimination when we're conducting these compliance reviews.

A third way in which the OCR enforces their civil rights laws is through what we refer to as findings of discrimination. And our regulations require that DOJ grantees submit to the OCR any findings of discrimination that have been made against the organization, whether it be in a judicial proceeding or some type of other administrative body.

Finally, our last enforcement mechanism is through our Equal Employment Opportunity Plans program, or EEOPs. And as for EEOPs, I'm going to talk briefly over the next few slides as to actually what that is. And we'll give this a chance to load.

An EEOP is a comprehensive document that is prepared by the DOJ-funded agency. And that document is going to analyze the agency's workforce in comparison to its relevant or available labor market broken down into seven EEO job categories and then cross-classified by race, sex, or national origin. The EEOP is a tool then used by OCR to identify possible problem areas where discrimination may be occurring in the DOJ funding agency's employment practices. So, we're often asked, "Who's required to prepare in an EEOP?" And the answer is — it depends. It depends on a number of factors, and they're listed on your screen. It could depend on the type of funding that you, as a grantee, are receiving. If you're receiving Safe Streets Act, VOCA, or JJDPA funding as well as any STOP funding and State and Territory Coalitions grants are authorized under the Safe Streets Act, then you would be required to submit an EEOP. The status of an organization will also dictate whether or not you need to submit an EEOP. For example, non-profits are exempt. The amount of a single award and/or the number of employees will also determine whether you, as an agency, will need to submit an EEOP.

On this next slide, I've prepared a chart which breaks down all of the factors we've just discussed, which will trigger who is submitting an EEOP and who is not. I have this up here for your review following the presentation. And if you have any questions about whether or not you need to submit an EEOP, of course you can reach back to us. But the categories are broken down pretty clearly and should be pretty obvious as to who should or should not submit an EEOP to the OCR. With regard to submitting the EEOP to OCR, there are two staff members who spend the bulk of their day reviewing EEOPs and providing technical assistance on that. Submitting the EEOP can be done online, and the address is on your screen. And if you only need to prepare a certification, which states that you are one of those agencies that does not need to prepare a full EEOP, but you simply need to certify particular things, you also may file that at the link on your screen.

The last topic that we're going to talk about today is one of the larger points that can begin with. And that is State Administering Agencies, or SAAs, and their obligations to monitor subrecipients. SAAs have some additional compliance requirements that they must satisfy. And so, they're specific to monitoring their sub-recipients. And they're set forth on the screen. A State Administering Agency must monitor its sub-recipient's compliance with civil rights laws, including, if applicable, ensuring that sub-recipients complete an EEOP certification form and submit the certification form and EEOP, if required, to the OCR. An SAA also must ensure that its sub-recipients provide notification to employees and beneficiaries that the sub-recipient does not discriminate, and that employees and beneficiaries have a right to file a complaint with the SAA or the OCR. SAAs must also ensure that its subrecipient has a Section 504 Coordinator. If it meets the employee and funding thresholds that were set out on the slide that Kim discussed. The SAA also must ensure that sub-recipients provide meaningful access to their programs and services to LEP individuals. Finally, an SAA must ensure that its sub-recipients comply with the regulations relating to FBOs and, again, that regulation was 28 C.F.R pt. 38.

So, with the additional requirements that SAAs have, we also are recommending that SAAs have procedures for handling discrimination complaints. And there are two points on your screen. The first is that an SAA should have written procedures for receiving and processing discrimination complaints from both its employees and beneficiaries, as well as the employees and beneficiaries of its sub-recipients. Second, is handling discrimination complaints from employees and beneficiaries of the SAA and its subrecipients involves three options. The SAA should be mindful that the investigation could be conducted by the SAA. Or the SAA could refer the complaint to the appropriate state or federal agency for investigation and resolution. Finally, the SAA could send the complaint to the OCR for investigation. Regardless of what the option is, they should be set forth in complaint procedures developed by the SAA.

Let's talk about Methods of Administration. And this, again, is an additional requirement that SAAs must comply. It's a special condition of formula grant awards. And SAAs are required to develop and submit to the OCR written Methods of Administration, or MOA, explaining how the SAA ensures that its subrecipients comply with the applicable federal civil rights requirements that are attaching to that DOJ funding. The MOA is going to be a document which is also a written narrative. There are going to be four elements that the SAA will need to address in that written narrative and provide any corroborating or supportive documentation. Those four elements are set forth on your screen. The first is that the SAA will explain how it's addressing complaints against its organization, as well as sub-recipients. It's going to explain how it is notifying subrecipients of civil rights requirements. The SAA will also be explaining in the MOA how it's monitoring sub-recipients for civil rights compliance. And finally, it's going to explain how it's training sub-recipients on civil rights requirements. At the top of this slide, you will see a link which you will be able to follow to find more specific detailed information on this MOA special requirement. As for the MOA, in submitting that, the SAA must submit its MOA to the Office for Civil Rights within 90 days after the date that they received the award. And it can be submitted electronically by way of the email

noted. And also, once the OCR receives those MOA documents, it conducts a review to ensure that all of the information within addresses the required four elements that I mentioned. And also, it has the supporting documentation that's needed. And the MOA is also covering sub-recipients.

Once the OCR reviews all of that documentation, it will notify the SAA whether or not any edits or modifications are needed to ensure compliance. And once compliance, the documents are in good shape, and have all the information that they need, the OCR then we'll provide an approval letter to the SAA that is good for three years. After that time, the SAA will then need to resubmit their MOA and, of course, it should contain any updated information.

The OCR has developed lots of sample documentation to assist SAAs in terms of preparing their complaint procedures, what sample MOA looks like. And you may find all of that on OCR's website. And I have included the link within the slide. And, of course, whether you have questions about preparing MOA, or any of the topics that we've talked about today, there is a ton of resources. I've included that information as well on your screen. You can find information specific to limited English proficiency, the ADA, as well as preparing an EEOP. The OCR also has prepared training modules, which grantees and sub-grantees can review and inform themselves of the civil rights laws, requirements, and obligations that they must comply with as recipients of DOJ funding.

And then, finally, as I've stressed at the beginning, and Kim followed up on, I'll say again, we encourage you to reach out to us with your questions. We understand that this is a lot of information. It's detailed. We're giving you the big picture. But many of you may have specific questions, specifically regarding your agency, and the services you provide, and to whom you're providing them. And so, our contact number, the main number, is listed there, as well as OCR's website. And then, both my information, as well as Kim's, is on the screen.

At this time, that's the end of our training presentation. I am hoping that it was helpful to all. And we are going to take a second to check the chat box to see if there might be any questions in there, or should you have questions go ahead and let us know. And we will get this answered for you.

So, the first is more of a common question, and it's, "Can you talk about how a shelter is supposed to work with the survivor who does not identify as a woman or a man?" And then the second part of that question is also, "Who may identify as gender non-conforming?"

KIM TOLHURST: So, generally speaking — this isn't a precise answer — but when we're looking, for example, at transgender clients of your services, we ask that you ask them to decide which group, which service they wish to participate in. So, I could look into this further and think about it. But I would think the same would apply to someone who is non-defined. The best practice would be to allow them to select which program or which services are suited to them.

TAMMY BAXTER: Thanks, Kim. And we know, again, that folks may want to build upon the answers that we're providing here. And we encourage you to reach out to us following the presentation. And we can have a much broader discussion about any fact-specific scenario. The next question that I see in the chat is likely one that I can address as it's building up my portion of the presentation. And it's asking, "Can you give an example of how you weigh, assess, vital documents outside of a criminal legal, such as police courts, et cetera, situation, like at a Sexual Assault Advocacy Program, or coalition?" Sure. And I'll have Kim weigh in, too, because I know that she actually has some experience working in these types of organizations. But types of documents that I would consider vital in a setting such as this would be any of those documents that would be providing notice to an individual who's seeking help or assistance. How they actually go about doing that? Are there specific intake forms that are assessing whether or not services could be provided to them or notifying them of what services are available? I would consider that as a document that should be assessed as vital and may require written translation depending on the Safe Harbor Provision. Kim, do you want to weigh in and are there any specific documents that come to mind that might be considered vital? Any that are weighing, important, any notice or rights within programs of this type?

KIM TOLHURST: I agree with what you just said, Tammy. To make sure that all of the basics are translated — whether they're eligible services, what services are available, and how to take the first steps at obtaining those services, in addition to the services mentioned by the questioner. Obviously, legal documents. But we need to make sure there's translation for the very basics of how and when to obtain these services.

TAMMY BAXTER: Thanks, Kim. Next question, "Is the MOA new? And will the MOA 90-day requirement be a special condition for the grant? And then building on that same question, will a reminder be sent out after the award of a formula grant?" Taking this three-part question, question by question, "Is the MOA new?" No, that's not a new requirement. It's been around for several years. And then, in terms of, "Will the MOA 90-day requirement be a special condition for the grant?" Those grants that have the MOA requirement it's contained within your standard assurances. And to my knowledge, that is being sent down. A letter is coming from our office, the Office for Civil Rights, to those organizations, grantees that must comply with the MOA requirement. In terms of a reminder, once you submit your MOA and then it's reviewed by the office, we send the approval letter. And then we do have a mechanism in place that once we're getting near to three-year period where the approval would lapse, we are reaching back out to SAAs to remind them that the MOA is due again for review. I see another question, Kim, this is likely for you. The question is, "If a state law requires the DV shelters and rape crisis centers, all of which are federal grantees or sub-grantees, to define male and female based on biological sex at birth? Would this be in conflict with federal discrimination laws and/or funding, whether that's VOCA, VAWA, VFP, SAA, or SAS at risk?" And then, the follow-up is, "Please let me know if this is more appropriate for a one-on-one conversation following the presentation."



KIM TOLHURST: And I can actually see that question. And I feel that is a complex question. And it's a question that is maybe moving over time. If you would send me the question providing your state, what I would do is compare your state law to the language in VAWA and other statutes you've listed, and see if there's direct overlap, or ways that you could conform with both. Or ways that the state law is explicitly in violation of the provisions of the statutes listed. I'd like to go over those directly compare the language.

TAMMY BAXTER: With regard to hiring in religion, we were speaking specifically about faith-based organizations. So, should your organization be considered a faith-based organization? The information that I have provided there would be specific to that. I see another question that says, "With regard to the state law question regarding gender assignment at birth, can OVW please issue recommended guidance for all state administrators?" And I'll stand down and let OVW respond.

SPEAKER 1: I will just note that question. It wouldn't be me doing the guidance, but I would suspect that we're not in a place to be doing that when it comes to state law that we would issue guidance on what state law ought to be. That is my non-lawyer time in OVW perspective. I don't know if Amy has a different perspective on that. But we certainly take note. And I understand service out of complicated questions, which is why we invite OCR on. And we'll have a legal issues session with OVW attorney advisors. And so, you can certainly ask questions about that in relation to OVW grants. So, a lot of it is going to be really nuanced. So, we're happy to support and answer your questions. But in terms of guidance, that's probably not likely. But I appreciate the question and I understand the desire for answers and support.

KIM TOLHURST: And as I noted earlier, from the OCR's perspective, best practices are allowing the recipient to ask a transgender beneficiary which group or service suits them. Now, a best practice isn't the same as the law. So, again, it would be looking to the state law and to OVW's view on this. We can all get together behind the scenes and come up with a recommended response.

TAMMY BAXTER: I'm not seeing any other questions in the chat. So, I will mention now, are there any other questions? And if there aren't, I will turn it back over to OVW, but we'll give it a second or two to see if anything pops up.

SPEAKER 1: Understandably, questions arise later as we think about particular circumstances, or just when you have time to process all of the dense information. So, I really appreciate both of you making yourself available and providing your contact information.

TAMMY BAXTER: I just want to thank everyone for attending today. And I can't emphasize enough that OCR is here to help you and provide technical assistance. And we get questions all the time. I want you to feel comfortable reaching out. Once you have an opportunity to digest and consider the information, and talk amongst your

colleagues, we're here to help in any way we can. So, thank you again for having us today.

KIM TOLHURST: Yes, thanks very much.

SPEAKER 1: Thank you again to our presenters, and we will see you later this afternoon.

TAMMY BAXTER: Thank you. Have a great day, everyone.