

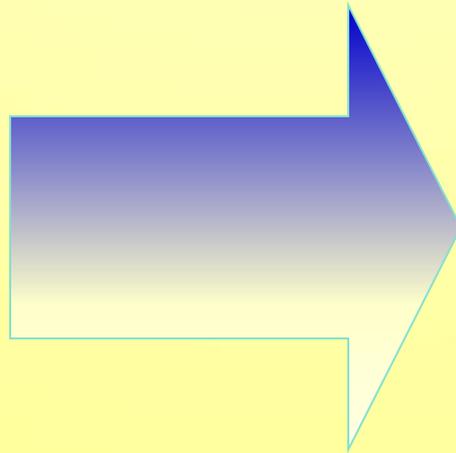
# Civil Rights Training for Montana Board of Crime Control OVW Subrecipients



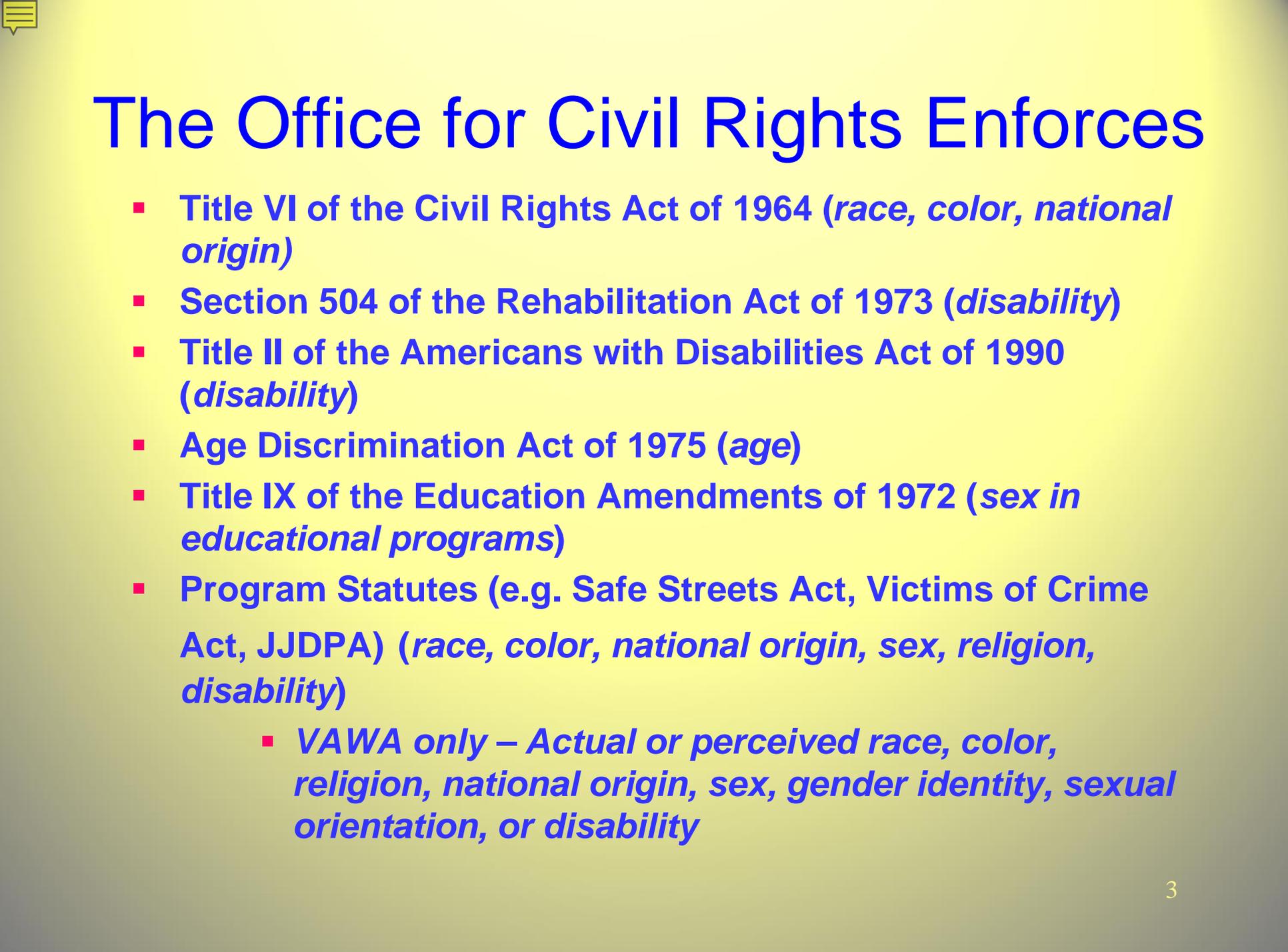
Source: Office for Civil Rights,  
Office of Justice Programs



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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*)
- Age Discrimination Act of 1975 (*age*)
- Title IX of the Education Amendments of 1972 (*sex in educational programs*)
- Program Statutes (e.g. Safe Streets Act, Victims of Crime Act, JJDPJA) (*race, color, national origin, sex, religion, disability*)
  - VAWA only – *Actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability*

# Who is subject to these laws?

- Any “PROGRAM OR ACTIVITY” that receives financial assistance from the United States Department of Justice.
- Program or Activity means all of the operations of an organization receiving federal financial assistance, such as the entire department or office within a state or local government.
- Examples:
  - If the Montana Board of Crime Control (MBCC) receives federal funding and subawards the funding to local community based organizations, all of the operations of MBCC are covered, along with the operations of the local community based organizations.
  - If a domestic violence shelter receives federal funds and uses the funds to operate particular programs, all of the activities of the shelter are covered, and not just the federally-funded programs.
  - If a project of a county sheriff’s department receives federal funds, the entire sheriff’s department is covered, but not the other departments in the county.

# Protected Classes

**Race  
Color  
National Origin  
Religion  
Sex  
Disability  
Age  
VAWA Only:  
Sexual Orientation  
Gender Identity**

The statutes that the Office for Civil Rights (OCR) enforces prohibit discrimination in:

- Employment Practices

and/or

- Delivery of Services

# Examples of discrimination in the delivery of services

- A funded domestic violence clinic has a blanket policy of only providing services to female victims of domestic violence, and not male victims.
- A funded police department stops all African-American individuals traveling in a particular area.
- A culturally-based sexual assault service program that is primarily designed to provide services to Hispanic individuals turns away a non-Hispanic individual seeking services.

# Thinking about services discrimination:

- ? Is there funding subject to Title VI, Section 504, Safe Streets Act, or other Program Statute?
- ? Does the delivery of services involve a Protected Class?
- ? Is a Protected Class receiving unequal treatment?

# Violence Against Women Act

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 (cont.)

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.

## VAWA (cont.)

Nothing in this title shall be construed to prohibit male victims of domestic violence, dating violence, sexual assault, and stalking from receiving benefits and services under this title.

# VAWA (cont.)

- October 1, 2013 effective date
- Covers employment practices
- “actual or perceived”
- Applies to all recipients

# VAWA (cont.)

- 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 (cont.)

- “Necessary for the Essential Operation of the Programming”
  - 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 (cont.)

- Comparable Services
- Consider the following:
  - Nature, quality, and duration of the service
  - Relative benefits of different therapeutic modalities
  - Geographic location

# VAWA (cont.)

- What is Gender Identity?
  - “Actual or perceived gender-related characteristics” (from Matthew Shepard- James Bird Hate Crimes Prevention Act)
  - A person’s internal view of the individual’s gender
  - May or may not correspond to sex assigned at birth
  - Transgender, male, and female are examples of gender identities

# VAWA (cont.)

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

# Disability

- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability by recipients of federal funding.
- Title II of the Americans with Disabilities Act (ADA) of 1990 prohibits discrimination on the basis of disability and applies to public entities, **whether or not** they receive federal funding.

# Under Section 504 and Title II of the ADA

**Handicapped (disabled) person means any person who**

- has a physical or mental impairment which substantially limits one or more major life activities**
- has a record of such an impairment, or**
- is regarded as having such an impairment**

# Disability Discrimination Analysis

- ADA requires a recipient to provide reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability unless the recipient can demonstrate this would be an undue hardship.
- Every case requires individualized analysis – individuals with disabilities are not a homogenous group even those with the same disability.

## Example:

- A shelter for abuse victims receives MBCC 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 persons who have a mental disability that may be controlled by medication and who are qualified to receive services.

# 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 (FBOs)

- 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, Jan. 2004

- FBOs must not use Federal funding to advance inherently religious activities
- FBOs may not discriminate against beneficiaries based on religion or religious belief

# Are these practices acceptable?

- An atheist participant in a life skills training program run by a FBO is required to participate in an opening prayer session before receiving the skills training.
- A woman seeking services at a local nonprofit shelter for battered women is not allowed to pray her rosary in her room while she is a resident of the shelter.

# No!

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

# FBO Reg & Employment

- Funded FBOs do not forfeit Title VII's exemption from religious discrimination in employment.
- “Some Department programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. Accordingly, grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements.” 28 CFR 38.1(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;
  - Inherently religious activities will be voluntary and kept separate from federally-funded activities; and
  - It is a religious organization that sincerely believes that abandoning its religious hiring practice in order to receive federal funding would substantially burden its religious exercise.

# National Origin Discrimination

Includes discrimination on the basis of Limited English Proficiency (LEP).

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

*To avoid  
discrimination  
against LEP persons,  
recipients must*

- Take **reasonable steps** to ensure **meaningful access** to the programs, services, and information the recipients provide, **free of charge**.
- Establish and implement **policies and procedures** for language assistance services that provide LEP persons with meaningful access.

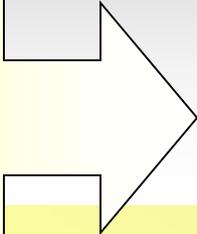
*What are reasonable steps?*

## **Four Factor Analysis**

- The ***number or proportion*** of LEP persons served or encountered in the eligible service population.
- The ***frequency*** with which LEP individuals come in contact with the program.
- The ***nature and importance*** of the program, activity, or service provided by the program.
- The ***resources*** available to the recipient.

# What are language services?

Provide  
oral  
language  
services

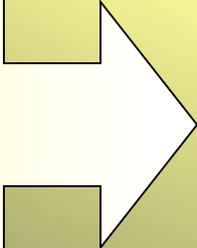


## Insure Interpreter Competency

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

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 should a written LEP Policy have?*

## Five Elements

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

# LEP RESOURCES

**[www.lep.gov](http://www.lep.gov)** – Contains tips and tools for different types of agencies on how to comply with requirements to provide services to LEP persons.

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

- Statute – Federal/State Laws
- Contract – signed award
- Regulation – compliance monitoring

# MBCC and OJP's Civil Rights Enforcement

- **EEOPs** (Equal Employment Opportunity Plans)
- **Complaints**
- **Findings of Discrimination**
- **Subgrantee Monitoring**



# Regulation

- In the event a Federal or State court or Federal or State administrative agency makes a **FINDING OF DISCRIMINATION** after a due process hearing on the ground of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to MBCC. MBCC will forward a copy to the Office for Civil Rights, Office of Justice Programs.
- The recipient will provide an **EQUAL EMPLOYMENT OPPORTUNITY PLAN** if required to maintain one, where the application is for \$500,000 or more.

# Subrecipient Complaint Procedures

- Subrecipients should have policies and procedures in place for responding to discrimination complaints from clients, beneficiaries, program participants, and employees. These should include:
  - Investigating the complaint internally, or forwarding the complaint to MBCC, the Office for Civil Rights, or another appropriate external agency such as the Human Rights Commission or the Equal Employment Opportunity Commission.
  - Notifying MBCC of any discrimination complaint that is not referred to the MBCC, but rather to another external agency; and
  - Notifying the complainant that he/she may file a complaint directly with MBCC or the OCR.

# Subrecipient Complaint Procedures

Subrecipients should provide public notice of these complaint procedures, such as by posting signage in places of public contact and referencing the procedures in program materials.

# Complaint Filing Options

- Individuals who believe they have been subjected to prohibited discrimination may file a complaint with MBCC by contacting MBCC's Human Resources Officer. This includes: applicants for employment with MBCC, employees of MBCC, applicants for employment with MBCC's subrecipients, employees of MBCC's subrecipients, and beneficiaries or program participants of MBCC's subrecipients. The MBCC Human Resources Officer can be reached at:

Connie Young  
MBCC Human Resources  
5. South Last Chance Gulch  
Helena, MT 59601  
406-444-6678

- MBCC does not investigate complaints of discrimination. MBCC assists in the referral of complaints concerning all forms of discrimination to the appropriate agency. Upon receipt of a complaint, the MBCC Human Resources Officer will determine if one or more of the following agencies has jurisdiction over the complaint, seeking additional information from the complainant if necessary. If one or more of these agencies has jurisdiction, the MBCC will refer the complaint to the appropriate agency within 10 calendar days of receiving the complaint, and notify the complainant of this action. If the MBCC does not refer a complaint, it will notify the complainant of this action within 10 business days of receiving the complaint as well.

# Complaint Filing Options (Cont.)

Montana Department of Justice, Human Resources Bureau (MDOJ, HRB)

302 N. Roberts, Scott Hart Building

PO Box 201404

Helena, MT 59620-1404

406-444-2026

[www.doj.mt.gov](http://www.doj.mt.gov)

Complaints filed with MDOJ, HRB must be received within one hundred eighty (180) calendar days of the alleged discriminatory occurrence. Complaints of Sexual Harassment are filed by notifying the ADA/EEO/AA Officer of MDOJ, HRB within sixty (60) calendar days of the alleged harassment.

Montana Human Rights Bureau (HRB)

PO Box 1728

Helena MT 59624

(406) 444-2884

(406) 444-0532 (TTY)

<http://www.erd.dli.mt.gov/humanright/hrhome.asp>

Complaints with the HRB must be filed within one hundred eighty (180) calendar days of the alleged discriminatory occurrence. It is necessary to file a charge with the HRB or EEOC in order to preserve the right to file a private lawsuit at a later date.

# Complaint Filing Options (Cont.)

United States Equal Employment Opportunity Commission (EEOC)

Denver District Office

303 E. 17th Avenue, Ste. 510

Denver CO 80203

(303) 866-1300

(303) 866-1950 (TTY)

[www.eeoc.gov](http://www.eeoc.gov)

Complaints with EEOC must be filed within three hundred (300) calendar days of the alleged discriminatory occurrence. It is necessary to file a charge with the HRB or EEOC in order to preserve the right to file a private lawsuit at a later date.

Office of Civil Rights, Office of Justice Programs, United States Department of Justice

810 7<sup>th</sup> Street, NW

Washington, DC 20531

(202) 514-4609

(202) 514-0716 (TTY)

Complaints filed with the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice must be received within one year of the alleged discrimination.

Anyone who wishes to file a complaint with one of these agencies may also do so directly without first contacting MBCC.

# What is an EEOP?

- **Comprehensive document which analyzes:**
  - an agency's workforce in comparison to its relevant labor market data
  - all agency employment practices to determine their impact on the basis of race, sex, or national origin
- **A tool used to identify possible problem areas where discrimination may be occurring**



# Does an agency have to prepare an EEOP?

Depends on . . .

- Funding (Safe Streets Act, VAWA, VOCA, JAG, or JJDPA)
- Status of Organization (*e.g.*, nonprofit)
- Amount of single award
- Number of employees

Entity Type	Number of Employees	Dollar Amount	Submit EEOP to OCR	Preparation and/ or Certif. Required	Assurance Required	Send Findings
Educational, Medical, Nonprofit, or Indian Tribe	Does not matter	Does not matter	<b>NO</b>	<b>YES</b> Certifying the entity type	<b>YES</b>	<b>YES</b>
State or Local Govts. & For-Profit Orgs.	Does not matter	Less than \$25,000	<b>NO</b>	<b>YES</b> Certifying less than \$25,000	<b>YES</b>	<b>YES</b>
State or Local Govts. & For-Profit Orgs.	Less than 50	Does not matter	<b>NO</b>	<b>YES</b> Certifying less than 50 employees	<b>YES</b>	<b>YES</b>
State or Local Govts. & For-Profit Orgs.	50 or more	\$25,000 or more but less than \$500,000	<b>NO</b>	<b>YES</b> prepare and Certify EEOP is on file for review	<b>YES</b>	<b>YES</b>
State or Local Govts. & For-Profit Orgs.	50 or more	\$500,000 or more for one grant	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>YES</b>

# Training Certification

- Click on the link to access the training certification. [OVW Civil Rights Training Certification](#). Complete the certification
- Include signed certification in signed award packet and return to MBCC.
  - If there is change in the Project Director, the new Project Director must complete the training and send the signed certification to MBCC.



# **Montana Board of Crime Control**

**(406) 444-3604**

**TTY (406) 444-7099**

**[www.mbcc.mt.gov](http://www.mbcc.mt.gov)**