

Civil Rights Training

The Emergency Food Assistance Program
(TEFAP)

Civil Rights Division
USDA, Food and Nutrition Service



Agenda (Optional)

- ▶ Civil Rights Coverage and Legal Authorities
- ▶ Areas of Compliance
 - Assurances
 - Public notification requirements
 - Complaints of discrimination
 - Civil Rights training
 - Racial and ethnic data collection
 - Limited English Proficiency (LEP)
 - Disability discrimination
 - Equal opportunity for religious organizations
 - Compliance Reviews
- ▶ Questions

Civil Rights Legal Authorities

- ▶ Title VI of the Civil Rights Act of 1964
 - Race, Color, and National Origin
- ▶ Civil Rights Restoration Act of 1987
 - Clarifies the scope of the Civil Rights Act of 1964
- ▶ Section 504 of the Rehabilitation Act of 1973 & Americans w/Disabilities Act of 1990
 - Disability
- ▶ Title IX of the Education Amendments of 1972
 - Sex
- ▶ Age Discrimination Act of 1975
 - Age



Civil Rights Legal Authorities

- ▶ 7 CFR Parts 15, 15a & 15b
- ▶ 7 CFR Parts 210, 215, & 220 (NSLP, SMP, SBP)
- ▶ 7 CFR Part 225 (SFSP)
- ▶ 7 CFR Part 226 (CACFP)
- ▶ 7 CFR Part 250 (USDA Foods)
- ▶ 7 CFR Part 251 (TEFAP)
- ▶ 28 CFR Part 42 (Nondiscrimination in Federally Assisted Programs)



Civil Rights Legal Authorities

- ▶ CNP: Richard B. Russell National School Lunch Act (NSLA) 42 USC 1751 et seq. Child Nutrition Act of 1966 (42 U.S.C. § 1771 et seq.)
- ▶ NSLP: Section 2 of the National School Lunch Act (NSLA), as amended, established the National School Lunch Program (NSLP) to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other foods.
- ▶ SMP: Section 3 of the Child Nutrition Act, as amended, established the Special Milk Program (SMP) to encourage the domestic consumption of fluid milk by children in nonprofit schools and institutions that do not participate in a meal service program authorized under the NSLA or Child Nutrition Act.
- ▶ SBP: Section 4 of the Child Nutrition Act, as amended, established the School Breakfast Program (SBP), to authorize payments to the States to assist them to initiate, maintain, or expand nonprofit breakfast programs in schools.
- ▶ SFSP: Section 13 of the NSLA, as amended, established the Summer Food Service Program (SFSP) to provide meals for children from needy areas during periods when area schools are not in session.
- ▶ CACFP: Section 17 of the NSLA, as amended, established the Child and Adult Care Food Program (CACFP) to initiate, maintain, and expand nonprofit food service programs for children or adult participants in nonresidential institutions that provide care.
- ▶ TEFAP: The Emergency Food Assistance Act of 1983 (Public Law 98-8), as amended.

Civil Rights Legal Authorities

- ▶ Executive Order 13166 & USDA LEP Policy Guidance (79 Fed. Reg. No, 229, Friday, November 28, 2014)
 - LEP
- ▶ 7 CFR Part 16, “Equal Opportunity for Religious Organizations”
 - Religion
- ▶ USDA Departmental Regulation 4330-2
- ▶ FNS Instruction 113-1 and Appendix B for Schools, SFSP, CACFP and C for USDA Foods and TEFAP



What is discrimination?

“Different treatment which makes a distinction of one person or a group of persons from others; either intentionally, by neglect, or by the actions or lack of actions...”

For FNS programs discussed today, complaints are based on one or more of the six Federally protected bases:

- 1) Race,
- 2) Color,
- 3) National Origin,
- 4) Age,
- 5) Sex,
- 6) Disability.

Assurances

- ▶ “To qualify for Federal financial assistance, the program application must be accompanied by a written assurance that the program or facility will be operated in compliance with the Civil Rights laws and implementing nondiscrimination regulations.”
- ▶ A Civil Rights assurance statement must be incorporated in all agreements between Federal & State agencies, State & subrecipient agencies, and subrecipient agencies & their local sites.

(FNS Instruction 113-1, Appendix C)



Public Notification

- All FNS assistance programs must include a public notification system.
- The purpose of this system is to inform applicants, participants, and potentially-eligible persons of:
 - program availability,
 - program rights and responsibilities,
 - the policy of nondiscrimination and
 - the procedure for filing a complaint.



Elements of Public Notification

- **Program Availability**
Inform applicants, participants, and potentially eligible persons of their program rights and responsibilities and the steps necessary for participation.
- **Complaint Information**
Advise applicants and participants at the service delivery point of their right to file a complaint, how to file a complaint, and the complaint procedures.
- **Nondiscrimination Statement**
All information materials and sources, including Web sites, used by FNS, State agencies, local agencies, SFAs or other subrecipients to inform the public about FNS programs must contain a nondiscrimination statement. The statement is not required to be included on every page of the program Web site. At a minimum, the nondiscrimination statement or a link to it must be included on the home page of the program information.

Elements of Public Notification

State agencies and their subrecipients must:

- ▶ Make program information available to the public upon request;
- ▶ Prominently display the “And Justice for All” poster;
- ▶ Inform potentially eligible persons, applicants, participants and grassroots organizations of programs or changes in programs;
- ▶ Convey the message of equal opportunity in all photos and other graphics that are used to provide program or program-related information;
- ▶ Provide appropriate information in alternative formats for persons with disabilities and in the appropriate language(s) for LEP persons.

Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#), (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

Nondiscrimination Statement *(Spanish)*

De conformidad con la Ley Federal de Derechos Civiles y los reglamentos y políticas de derechos civiles del Departamento de Agricultura de los EE. UU. (USDA, por sus siglas en inglés), se prohíbe que el USDA, sus agencias, oficinas, empleados e instituciones que participan o administran programas del USDA discriminen sobre la base de raza, color, nacionalidad, sexo, discapacidad, edad, o en represalia o venganza por actividades previas de derechos civiles en algún programa o actividad realizados o financiados por el USDA.

Las personas con discapacidades que necesiten medios alternativos para la comunicación de la información del programa (por ejemplo, sistema Braille, letras grandes, cintas de audio, lenguaje de señas americano, etc.), deben ponerse en contacto con la agencia (estatal o local) en la que solicitaron los beneficios. Las personas sordas, con dificultades de audición o discapacidades del habla pueden comunicarse con el USDA por medio del Federal Relay Service [Servicio Federal de Retransmisión] al (800) 877-8339. Además, la información del programa se puede proporcionar en otros idiomas.

Para presentar una denuncia de discriminación, complete el [Formulario de Denuncia de Discriminación del Programa del USDA](#), (AD-3027) que está disponible en línea en: http://www.ascr.usda.gov/complaint_filing_cust.html y en cualquier oficina del USDA, o bien escriba una carta dirigida al USDA e incluya en la carta toda la información solicitada en el formulario. Para solicitar una copia del formulario de denuncia, llame al (866) 632-9992. Haga llegar su formulario lleno o carta al USDA por:

- (1) correo: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; o
- (3) correo electrónico: program.intake@usda.gov.

Esta institución es un proveedor que ofrece igualdad de oportunidades.



Nondiscrimination Statement

- ▶ USDA Nondiscrimination Statement (NDS)
 - Short versions
 - **This institution is an equal opportunity provider.**
 - **Esta institución es un proveedor que ofrece igualdad de oportunidades. (Spanish)**
 - *Can be used in special circumstances only
 - Translations
 - Other languages are forthcoming

“And Justice For All” Poster

- ▶ Display the poster in a prominent location for all to view
- ▶ AD-475A
 - New required version for TEFAP and Child nutrition programs
- ▶ Poster reflects current Nondiscrimination Statement and new graphic



Racial and Ethnic Data Collection

- ▶ TEFAP is exempt from data collection per FNS Instruction 113-1 Appendix C, Section D *DATA COLLECTION AND REPORTING*
- ▶ “State agencies and local agencies or other subrecipients that operate FDPIR and CSFP must collect and maintain racial or ethnic data as specified below. The other commodity programs listed under this Appendix are exempt from this requirement.”

Otherwise.....



Racial/Ethnic Data Collection

- “...State agencies, local agencies, and other subrecipients must provide for and maintain a system to collect the racial and ethnic data in accordance with FNS policy. These data will be used to determine how effectively FNS programs are reaching potential eligible persons and beneficiaries, identify areas where additional outreach is needed, assist in the selection of locations for compliance reviews, and complete reports as required.
- “...State agencies, local agencies, and other subrecipients are required to obtain data by race and ethnic category on potentially-eligible populations, applicants, and participants in their program service area...Systems for collecting actual racial and ethnic data must be established and maintained for all programs. (FNS Instruction 113-1 Section XII)



Racial/Ethnic Data Collection

- Purpose: To determine how effectively FNS programs are reaching potentially-eligible persons and beneficiaries.
- As a means of monitoring civil rights compliance, state agencies shall establish a system for the collection of racial/ethnic data of each person applying for and receiving benefits.
- Applicants shall be assured that the information is required for and used for statistical purposes only and has no effect on eligibility criteria.
- Data should be collected at the point of application.

Racial/Ethnic Data Collection

- If an applicant/parent does not consent to the self-identification method, the caseworker will, through visual observation, determine the applicant's race or ethnicity and mark applicable category.
 - [Children are not to be surveyed.](#)
- State and local agencies should compare their participant data with potentially-eligible persons within their service areas
 - If disparities or areas of underrepresentation occur, it will be necessary to investigate the causes for it
 - Provide additional outreach as needed
 - Assist with selection of compliance reviews

Racial/Ethnic Data Collection

- In instances where racial/ethnic data is collected via online systems, provisions must be made for applicants/ participants to self-identify. The ability to verify this data by some manner of signing a printout, etc., must be available.
- Data must be collected/retained by the service delivery point for each program as specified in the program regulations, instructions, policies and guidelines.
- Records must be maintained for 3 years.
- Access restricted only to authorized personnel.
- Complete reports and submit data, as required to FNS.



Race and Ethnic Categories – Two Question Format

1. Ethnicity

- *Hispanic or Latino*
- *Not Hispanic or Latino*

2. Race (one or more of the following)

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

Complaints of Discrimination

- ▶ Complaints shall be accepted and forwarded to USDA;
- ▶ Complaints must be filed within 180 days from the alleged act of discrimination;
- ▶ Complaints may be written, verbal, or anonymous;
- ▶ State agencies or subrecipient agencies may develop their own complaint forms, but the use of such forms cannot be a pre-requisite for acceptance ;
- ▶ A **separate** Civil Rights complaint log shall be maintained by the State & subrecipient agency;
- ▶ Confidentiality is extremely important and must be maintained.

Civil Rights Complaints Process

Complaints should include:

- ▶ Name, address, and telephone number of the complainant
- ▶ The location and name of the organization or office
- ▶ The nature of the incident or action
- ▶ The names, titles, and business addresses of persons who may have knowledge of the discriminatory action
- ▶ The date(s) during which the alleged discriminatory actions occurred
- ▶ The basis for the alleged discrimination.

Age Based Complaints



Food and
Nutrition
Service

Park Office
Center

3101 Park
Center Drive
Alexandria
VA 22302

April 7, 2016

SUBJECT: Age Discrimination Act of 1975 –Mediation of Complaints

TO: All Regional Civil Rights Directors

This memorandum provides guidance on the processing of discrimination complaints under the Age Discrimination Act of 1975 (Age Act), as amended, 42 U.S.C. 6101 *et seq.* The Age Act is one of the Federal civil rights laws enforced by FNS CRD that prohibits age discrimination in programs or activities receiving Federal financial assistance. Federal regulation, 45 CFR 90, provides general, government-wide rules for the implementation of the Age Act. Last year, the Department issued 7 CFR 15c establishing the policy of non-discrimination on the basis of age in USDA programs and activities and reinforcing the applicability of the policy to each FNS recipient.

These regulations require that all complaints alleging Age Act violations be referred for mediation. Mediation involves the use of an impartial, third-party mediator, who assists the complainant and respondent in reaching terms that both parties find satisfactory, without imposing a decision upon the parties. Mediation offers a faster and more creative resolution of complaints through informal dispute resolution methods, while minimizing expenses to the parties. All of the information obtained in the course of mediation is kept confidential.

Participation in mediation is not optional, but mandatory for both the complainant and the State Agency against whom the complaint is filed. 45 CFR 90.43(c); 7 CFR 15c.7(d). State Agencies are not required to reach an agreement or settle the dispute, but must participate in the effort to reach a resolution on a good faith basis.

For these reasons, it is important that every State Agency administering FNS-assisted programs promptly refer all complaints to FNS CRD that allege unlawful discrimination on the basis of age, regardless of whether other bases are alleged. FNS CRD will then forward the complaints to the Federal Mediation and Conciliation Service (FMCS) upon receipt. Concurring investigations of the complaint should not be conducted while FMCS performs mediation.

This guidance memorandum should be shared with Program Directors in your region and any State Agency deemed appropriate to facilitate cooperation with FMCS and/or FNS CRD staff for compliance with Age Act requirements. If you have any questions, please contact Harriet Komegay, Harriet.Komegay@fns.usda.gov.

Roberto Contreras
Director, Civil Rights Division

USDA is an Equal Opportunity Provider, Employer and Lender

Civil Rights Complaints Process

- ▶ USDA Discrimination Complaint Form

- English

- http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf

- Spanish

- http://www.ocio.usda.gov/sites/default/files/docs/2012/Spanish_Form_508_Compliant_6_8_12_0.pdf

Civil Rights Training

- ▶ State agencies are responsible for training subrecipient agencies on an annual basis.
- ▶ Subrecipient agencies are responsible for training their local sites, including “frontline staff” who interact with applicants or participants on an annual basis.
- ▶ New employees before participating in Program activities
- ▶ Volunteers must receive training appropriate to their roles and responsibilities

Civil Rights Training

All staff should receive training on all aspects of Civil Rights compliance, including:

- Collection and use of data;
- Effective public notification systems;
- Complaint procedures;
- Compliance review techniques;
- Resolution of noncompliance;
- Requirements for reasonable accommodation of persons with disabilities;
- Requirements for language assistance;
- **Conflict resolution; and**
- **Customer service.**

Who are persons with Limited English Proficiency (LEP)?

Definition

Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

LEP and Bilingual Requirements

- Title VI and its implementing regulations, Executive Order 13166, and Federal agency guidance require Federal agencies and recipients (State agencies, local agencies, or other subrecipients), to take reasonable steps to ensure “meaningful” access to their programs and activities by Limited English Proficient (LEP) persons.

(FNS Instruction 113-1, Section VII)

LEP and Bilingual Requirements

Factors to consider in addressing LEP

- Number or proportion of LEP persons served or encountered in the eligible population.
- Frequency with which LEP individuals come in contact with the program.
- Nature and importance of the program, activity, or service provided by the program.
- Resources available to the recipient and costs.

LEP and Bilingual Requirements

Population data sources

- US Census Data
✓ <http://www.census.gov/2010census/data/>
- American Community Survey
✓ <http://www.census.gov/acs/>
- Migration Policy Institute's National Center on Immigrant Integration Policy
✓ <http://www.migrationpolicy.org/>
- Department of Justice site: LEP.GOV
✓ <http://www.lep.gov/maps/>

Disability Discrimination

What is the definition of *disability*?

- ▶ A 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.
- ▶ Major life activity means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. *functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, and reproductive functions. (ADA Amendments Act of 2008)

Disability Discrimination

- ▶ Sections 504 of the Rehabilitation Act of 1973 and USDA implementing Regulation, 7 CFR Part 15b
 - prohibit discrimination based on disability in programs or activities receiving Federal financial assistance.
- ▶ Americans with Disabilities Act (ADA), 28 CFR Part 35, Title II, Subtitle A
 - prohibits discrimination on the basis of disability in all services, programs and activities provided to the public by State and local governments.
- ▶ These Civil Rights laws protect persons with disabilities if they are potential applicants or participants in any FNS funded programs.

Disability Discrimination

- ▶ There is also an obligation to ensure that members of the public are provided accommodations in order to access program information, applications and assistance (i.e. Braille, large print, and audio tape)
- ▶ Providing qualified sign language interpreters for persons with hearing disabilities may be necessary to effectively communicate with these applicants and participants.

Equal Opportunity for Religious Organizations

7 CFR Part 16 notes:

- ▶ Ensures a level playing field for the participation of faith-based organizations and other community organizations in USDA programs.

Compliance Reviews

- ▶ Examine the activities of State agencies, subrecipients, and local sites to determine Civil Rights compliance;
- ▶ FNS Civil Rights and Program staff review State agencies.
 - FNS staff and State agencies review subrecipients. Subrecipients review local sites.
- ▶ Significant findings must be provided in writing to the reviewed entity and to FNS.

Compliance Reviews

There are three types of compliance reviews:

- Pre-Award Compliance Reviews
- Routine (Post-Award) Compliance Reviews
- Special Compliance Reviews

Pre-Award Compliance Reviews

- ▶ State agencies, subrecipient agencies, and local sites must be in compliance with Civil Rights requirements prior to approval for Federal financial assistance.



Routine/Post-Award Compliance Reviews

- ▶ FNS and State agency must conduct routine compliance reviews as identified by FNS Instruction 113-1 and program-specific regulations, policies

- ▶ Sample post-award review questions
 - Do printed materials contain the nondiscrimination statement?
 - Is the *And Justice For All* poster displayed appropriately?
 - Are program informational materials available to all?
 - Is data on race and ethnicity collected appropriately?
 - How are applicants and participants advised of their right to file a Civil Rights complaint of discrimination?
 - Are reasonable accommodations appropriately made for people with disabilities?

Special Compliance Reviews

- ▶ May be scheduled or unscheduled;
- ▶ To follow-up on previous findings of noncompliance;
- ▶ To investigate reports of noncompliance by other agencies, media, or grassroots organizations;
- ▶ May be specific to an incident or policy;
- ▶ History of statistical underrepresentation of particular group(s);
- ▶ Pattern of complaints of discrimination.

Resolution of Noncompliance

- ▶ A factual finding that any civil rights requirement, as provided by law, regulation, policy, instruction, or guidelines, is not being adhered to by a State agency, subrecipient agency, or a local site.
- ▶ Steps must be taken immediately to obtain *voluntary* compliance.
- ▶ A finding's effective date is the date of notice to the reviewed entity.



Verification of Citizenship or Immigration Status

This issue should never give rise to discrimination.

Questions?

Contact Information

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