Civil Rights Training

The Emergency Food Assistance Program

Civil Rights Division USDA,
Food and Nutrition Service

With Revised Nondiscrimination Statement: 1/21/21
Agenda

Civil Rights Coverage and Legal Authorities

Areas of Compliance

• Assurances
• Public notification requirements
• Racial and ethnic data collection
• Civil Rights training
• Disability discrimination
• Limited English Proficiency (LEP)
• Complaints of discrimination
• Compliance reviews
• Resolution of noncompliance / Voluntary Resolution Agreements
• Verification of Citizenship

Questions
Civil Rights Legal Authorities

- Title VI of the Civil Rights Act of 1964
  Race, Color, and National Origin

  Disability

- Age Discrimination Act of 1975
  Age

- Title IX of the Education Amendments of 1972
  Sex
Civil Rights Legal Authorities

- Civil Rights Restoration Act of 1987
  Clarifies the scope of the Civil Rights Act of 1964

- 28 CFR Part 35: Nondiscrimination on the Basis of Disability in State/Local Government Services

- 28 CFR Part 42: Nondiscrimination in Federally Assisted Programs

Civil Rights Legal Authorities

- 7 CFR Parts 15, 15a and 15b
  Nondiscrimination, Education, Disability

- 7 CFR Part 16
  Ensures a level playing field for the participation of faith-based organizations and other community organizations in USDA programs.

- USDA Departmental Regulation 4330-2 (non-discrimination regulations)


- FNS Instruction 113-1 and Appendix C for TEFAP
Additional Legal Authorities

- Emergency Food Assistance Act of 1983
- Food and Nutrition Act of 2008;
- Agriculture Improvement Act of 2018;
- 7 CFR Parts 250 & 251(TEFAP)
What is discrimination?

Discrimination is 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 based on...
In TEFAP, there are six protected bases:

1) Race
2) Color
3) National Origin
4) Age
5) Sex
6) Disability
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 must be incorporated in all agreements between State and local agencies and their subrecipients.

See FNS Instruction 113-1, Appendix C for Program and Form FNS-74 for specific assurance language.
Subrecipient agreements must also include a Civil Rights assurance of nondiscrimination.

These assurances are binding on the program applicant and its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from USDA.
Public Notification

All FNS assistance programs must include a public notification system.
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.
Elements of Public Notification

Nondiscrimination Statement

All information materials and sources, including Web sites, used by FNS, State agencies, local agencies, 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: https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf, 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: https://www.ocio.usda.gov/sites/default/files/docs/2012/Spanish_Form_508_Compliant_6_8_12_0.pdf 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

At a minimum, the Nondiscrimination Statement should be on:

Application Form(s)

Notification of Eligibility or Ineligibility

Notice of Adverse Action Form

Program (Home) Web Page

Public Information, including program literature
Nondiscrimination Statement

USDA Nondiscrimination Statement (NDS)

Short version

- 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 available on FNS CRD web page
“And Justice For All” Poster

Display the poster in a prominent location for all to view

AD-475A September 2019
New required version.
Race/Ethnicity Data Collection

Per FNS Instruction 113-1, Appendix C, TEFAP is exempt from data collection requirements.
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 modification of persons with disabilities;
- Requirements for language assistance;
- Conflict resolution and customer service.
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

The ADA requires public entities to make “reasonable modifications” in their usual ways of doing things when necessary to accommodate people who have disabilities. (e.g. provide Braille, large print, audio tape, other auxiliary aids or services).

Providing qualified sign language interpreters for persons with hearing disabilities may be necessary to effectively communicate with these applicants and participants.
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.
Title VI and its implementing regulations, Executive Order 13166, and USDA LEP 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)
Factors to consider in addressing LEP:

The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient.

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.
States must conduct assessments to determine language profile for their State, taking into account regional differences and updating as appropriate.

Translation of vital documents is required.

Notification of free interpretation services is required.

Staff training regarding how to provide LEP populations with meaningful access is paramount (front line, staff).
LEP and Program Access

Population data sources

- Interagency LEP Website – Mapping Tool
  ✓ http://www.lep.gov/maps/

- 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/
Complaints of Discrimination

Complaints shall be accepted and forwarded to USDA;

This is in accordance with the agency’s Complaint processing MOU with FNS CRD

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.
Complaint Processing Procedures

• If approved for processing at the State level:
  ▪ Must be in accordance with FNS Instruction 113-1

• If not, complaints received should be forwarded directly to USDA:
  ▪ Forward within 5 days

• Complaints based on age:
  ▪ Must all be forwarded to FNS within 5 working days

• Maintain a separate log reflecting only civil rights complaints.
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.
Civil Rights Complaints Process

USDA Discrimination Complaint Form

English

Spanish
https://www.ocio.usda.gov/sites/default/files/docs/2012/Spanish_Form_508_Compliant_6_8_12_0.pdf
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 local agencies.

Local agencies review their subrecipients.

Significant findings must be provided in writing to the reviewed entity and to FNS.
There are three types of compliance reviews:

- Pre-Award Reviews
- Routine (Post-Award) Reviews
- Special Reviews
State agencies, TEFAP sponsors, or other sub recipients must be in compliance with Civil Rights requirements prior to approval for Federal financial assistance.

(FNS Instruction 113-1, Appendix C)
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 modifications appropriately made for people with disabilities?
Special 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.
A Voluntary Resolution Agreement (VRA) is an agreement that recipient(s) are willfully consenting to undertake remedial actions to address identified areas of noncompliance or in violation with applicable civil rights laws and/or regulations.

The VRA may be between multiple parties such as the officials in authority to regulate civil rights laws (Food and Nutrition Service, Civil Rights Division, (FNS CRD)), recipient or sub-recipient (State agency or Foodbank), and program participant (Complainant).

Voluntary Resolution Agreements may be used to closeout a Civil Rights Review at the discretion of FNS CRD in lieu of issuing a written Civil Rights Review report with findings.
Verification of Citizenship or Immigration Status

This issue should never give rise to discrimination.