

TEFAP and CSFP Civil Rights Training

February 11, 2021



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Agenda

- Civil Rights Coverage and Legal Authorities
- Areas of Compliance
 - Assurances
 - Public Notification
 - Racial and Ethnic Data Collection
 - Language Access for Limited English Proficiency (LEP) Persons
 - Disability Access for Individuals with Disabilities
 - Equal Opportunity for Religious Organizations
 - Civil Rights Training
 - Complaints of Discrimination
 - Compliance Reviews
 - Resolution of Noncompliance
 - Customer Service and Conflict Resolution
- Questions

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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 and other Civil Rights Laws in Federally assisted programs

Section 504 of the Rehabilitation Act of 1973; Americans w/Disabilities Act of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2008

- Disability

Title IX of the Education Amendments of 1972

- Sex

Age Discrimination Act of 1975

- Age

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Civil Rights Legal Authorities

Sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (Public Law 93-86), as amended (CSFP)

The Emergency Food Assistance Act of 1983 (Public Law 98-8), as amended

7 CFR Part 15, 15a, 15b and 15c

- Gives USDA agencies authority to develop Civil Rights requirements and prohibits discrimination in Federally assisted programs or activities

7 CFR Part 16, "Equal Opportunity for Religious Organizations"

- Gives equal footing to religiously affiliated organizations

7 CFR Parts 247, 251 and 250 (CSFP, TEFAP and USDA Foods)

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Civil Rights Legal Authorities

28 CFR 35

- Covers nondiscrimination on the basis of disability by State/local Governments

28 CFR 36

- Covers nondiscrimination on the basis of disability by public accommodations

28 CFR 42

- Covers nondiscrimination in Federally assisted programs

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Civil Rights Legal Authorities

- Executive Order 13166 - "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000)
- "Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency" (79 Fed. Reg. No. 229, Friday, November 28, 2014) **USDA LEP Policy Guidance**

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Civil Rights Legal Authorities

USDA Departmental Regulation 4330-2

- Prohibits discrimination in programs and activities funded in whole or in part by the USDA

USDA Departmental Regulation 4300-003

- Equal Opportunity Public Notification Policy

FNS Instruction 113-1 and Appendix C

- Provides information on Civil Rights compliance and enforcement

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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...”

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

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Assurances

To qualify for Federal financial assistance, an application must be accompanied by a written assurance that the entity to receive financial assistance will be operated in compliance with all nondiscrimination laws, regulations, instructions, policies, and guidelines.

A Civil Rights assurance statement must be incorporated in all agreements between

- Federal and State agencies (Federal-State Agreement: FNS Form 74)
- State agencies and subrecipient agencies
- Subrecipient agencies and their local sites (if applicable)

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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
- The Procedure for Filing a Complaint

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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

Must 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 websites, must contain a nondiscrimination statement. The statement is not required to be included on every page of the program website. At a minimum the nondiscrimination statement or a link to it must be included on the home page of the program information.

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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

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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](https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint), (AD-3027) found online at: <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint>, 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.

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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.

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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)
- *Only Can be used in special circumstances

Translations

- **22 Non-English Languages at:**
<https://www.fns.usda.gov/cr/fns-nondiscrimination-statement>

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"And Justice For All" Poster

Display the poster in a prominent location for all to view

AD-475A

New required version for CSFP and TEFAP



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Race/Ethnicity Data Collection

Purpose:

- ✓ To determine how effectively FNS programs are reaching potentially eligible persons and beneficiaries
- ✓ To monitor Civil Rights compliance, state agencies must establish a system for the collection of race and ethnicity data for each person applying for and participating in FNS programs

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Race/Ethnicity Data Collection

When requesting CSFP participants self-identify race and ethnicity, inform participants that:

- ✓ Provision of data is voluntary
- ✓ Data is used for statistical purposes only to ensure the State agency reaches all potentially eligible people
- ✓ Provision of information has no effect on eligibility for CSFP

Children must not be surveyed.

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Race/Ethnicity Data Collection

- ✓ State agencies must ensure that documentation for the data collected by the local agency or other subrecipient is on file and maintained for the required 3 years.
- ✓ Ensure that access to data is limited to authorized personnel.
- ✓ Use Form FNS-191, Racial or Ethnic Group Participation – Commodity Supplemental Food Program, to record and submit to FNS racial or ethnic participation data for CSFP households.

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Race and Ethnicity Categories - Two Question Format

1. Ethnicity

Hispanic or Latino

Not Hispanic or Latino

2. Race (*may select one or more of the following*)

American Indian or Alaska Native

Asian

Black or African American

Native Hawaiian or Other Pacific Islander

White

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Language Access Requirements

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)

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Limited English Proficiency (LEP) and Program Access

✓ **Who are persons with LEP?**

- Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English because of their national origin

What is Meaningful Access?

- Meaningful access is accomplished by providing competent, accurate, timely and effective language services at no charge to individuals with LEP when accessing recipient programs and activities.
- Failure to provide “meaningful” access to persons with LEP could be discrimination on the basis of national origin.

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LEP and Program Access

Factors to consider in when ensuring “meaningful” access:

- ✓ 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 and their costs

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LEP and Program Access

- State agencies 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.
- Oral translations and notification of free interpretation services is required.
- Staff training regarding how to provide LEP populations with meaningful access is paramount (frontline staff).

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LEP and Program Access

- Language services:
 - ✓ Applicants and participants cannot be asked to bring their own interpreters
 - ✓ Children should **not** be used as interpreters
 - ✓ Use qualified, competent language resources
- Examples of language services:
 - ✓ Qualified, competent bilingual staff
 - ✓ Telephone interpreter lines
 - ✓ Oral interpretation services
 - ✓ Written language services
 - ✓ Qualified, competent community organizations and volunteers

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LEP Population and Data Sources

Population data sources:

- Department of Justice site: LEP.GOV
<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/>

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Disability Discrimination

- Section 504 states that “no otherwise qualified individual with a disability in the United States... shall solely by reason of his or her disability, be excluded from, denied the benefits of, or be subjected to discrimination under” any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.”
- The ADA has similar nondiscrimination requirements that prohibit discrimination on the basis of disability in services, programs, and activities provided by State and local government entities.

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Disability Discrimination

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

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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)

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Disability Discrimination

- As programs and offices modernize, it is imperative that websites, including State and local agency websites, and online application systems are readily accessible to and useable by persons with visual impairments and other disabilities.
- In addition, programs must ensure physical accessibility for buildings and facilities, particularly to persons in wheelchairs and with mobility disabilities.
- Programs must permit service animals to accompany people with disabilities in all areas where the public is allowed to go.

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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 must receive training.
- Volunteers must receive training appropriate to their roles and responsibilities.

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Civil Rights Training

All staff should receive training on all aspects of Civil Rights compliance, including, but not limited to:

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

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Complaints of Discrimination

- Complaints must be filed within 180 days from the alleged act of discrimination, with exceptions.
- 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.
- State agencies and subrecipient agencies must maintain a separate Civil Rights complaint log
- Confidentiality is extremely important and must be maintained.

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Complaints of Discrimination

- Complaints based on all protected bases, except age
 - ✓ Must be forwarded to FNS Civil Rights Division, Regional Civil Rights Officer, within 5 calendar days

- Complaints based on age (or age complaints that include other bases)
 - ✓ Must be forwarded to FNS Civil Rights Division, Regional Civil Rights Officer, within 5 business days of receipt

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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

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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.
- ✓ State agencies review their subrecipients.
- ✓ Subrecipients review their local agencies.

Significant findings must be provided in writing to the reviewed entity and to FNS.

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Compliance Reviews

There are three types of compliance reviews:

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

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Pre-Award Compliance Reviews

State agencies, subrecipient agencies, and local sites must comply with Civil Rights requirements prior to approval for Federal financial assistance.

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Routine/Post-Award Reviews

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

- ✓ **Assess all Civil Rights compliance areas**
- ✓ **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 and auxiliary aids and services appropriately made for people with disabilities?

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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

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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.

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Questions

