



United States Department of Agriculture

# **Civil Rights Training**

# **The Emergency Food Assistance Program**

Civil Rights Division

USDA, Food and Nutrition Service

Webinar Session  
March 5, 2020<sup>1</sup>



# 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**
- Section 504 of the Rehabilitation Act of 1973 & Americans w/Disabilities Act of 1990 (ADA); ADA Amendments Act of 2008.  
**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
- Executive Order 13166 – “Improving Access to Services for Persons with Limited English Proficiency” (August 11, 2000)



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## 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)

- USDA LEP Policy Guidance (79 Fed. Reg. No. 229. Friday, November 28, 2014)

- **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...



# Protected Bases in Food Distribution Programs

In TEFAP, there are six 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 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.



## Assurances

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:

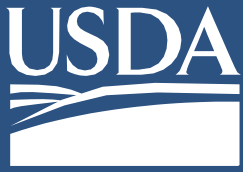
Make program information available to the public upon request;

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.



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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](#), (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](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](mailto: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](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](mailto: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



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# "And Justice For All" Poster

Display the poster in a prominent location for all to view

AD-475A September 2019

New required version.



In accordance with Federal law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, disability, and reprisal or retaliation for prior civil rights activity. (Not all prohibited bases apply to all programs.)

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, and American Sign Language) should contact the responsible State or local Agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD 3027, USDA Program Discrimination Complaint Form, which can be obtained online, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

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

Conforme a la ley federal y las políticas y regulaciones de derechos civiles del Departamento de Agricultura de los Estados Unidos (USDA), esta institución tiene prohibido discriminar por motivos de raza, color, origen nacional, sexo, edad, discapacidad, venganza o represalia por actividades realizadas en el pasado relacionadas con los derechos civiles (no todos los principios de prohibición aplican a todos los programas).

La información del programa puede estar disponible en otros idiomas además del inglés. Las personas con discapacidades que requieren medios de comunicación alternativos para obtener información sobre el programa (por ejemplo, Braille, letra agrandada, grabación de audio y lenguaje de señas americano) deben comunicarse con la agencia estatal o local responsable que administra el programa o con el TARGET Center del USDA al (202) 720-2600 (voz y TTY) o comunicarse con el USDA a través del Servicio Federal de Transmisión de Información al (800) 877-8339.

Para presentar una queja por discriminación en el programa, el reclamante debe completar un formulario AD 3027, Formulario de queja por discriminación del programa del USDA, que se puede obtener en línea, en cualquier oficina del USDA, llamando al (866) 632-9992, o escribiendo una carta dirigida al USDA. La carta debe contener el nombre, la dirección y el número de teléfono del reclamante, y una descripción escrita de la supuesta acción discriminatoria con suficiente detalle para informar al Subsecretario de Derechos Civiles (ASCR) por sus siglas en inglés) sobre la naturaleza y la fecha de la presunta violación de los derechos civiles. La carta o el formulario AD-3027 completado debe enviarse al USDA por medio de:

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



## **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.**



## 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.



## **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.



## **LEP and Program Access**

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)



## LEP and Program Access

### **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.



## **LEP and Program Access**

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.

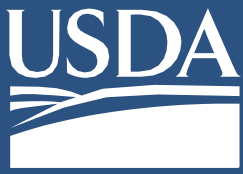
Notification of free interpretation services is required.

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.





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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](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](http://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.



## Compliance Reviews

**There are three types of compliance reviews:**

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



## Pre-Award/Pre-Approval 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)



## Routine/Post-Award 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 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.



# Voluntary Resolution Agreement

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.

# Update, January 2021

Some URLs on **page 15**, **page 16**, and **page 33** have become outdated.

How to File a Program Discrimination Complaint:

<https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint>

The USDA Discrimination Complaint Form in **English** can be found at the following address:

[https://www.ocio.usda.gov/sites/default/files/docs/2012/Complain\\_combined\\_6\\_8\\_12.pdf](https://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf)

The USDA Discrimination Complaint Form in **Spanish** can be found at the following address:

[https://www.ocio.usda.gov/sites/default/files/docs/2012/Spanish\\_Form\\_508\\_Compliant\\_6\\_8\\_12\\_0.pdf](https://www.ocio.usda.gov/sites/default/files/docs/2012/Spanish_Form_508_Compliant_6_8_12_0.pdf)