



**USDA FOOD AND NUTRITION SERVICE
MID-ATLANTIC REGION
CIVIL RIGHTS FACT SHEETS**



Revised April 2009

CIVIL RIGHTS FACT SHEET 1: ASSURANCES

Ref: FNS CR Instruction 113 Section X and Appendices B and C

Definition

Assurance: A contractual agreement (i.e. Federal/State Agency Agreement or a State Agency/Local Agency Agreement) in which a State agency, local agency, or other subrecipient legally agrees to administer FNS program services and benefits in accordance with all laws, regulations, instructions, policies, and guidance related to nondiscrimination in program delivery. ***FNS-74 is the form used to document an assurance agreement.***



In order 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. FNS will obtain written assurance of nondiscrimination compliance from each State agency. FNS will also ensure that State agencies are obtaining assurance from local agencies or other subrecipients that receive Federal financial assistance.

This agreement permits authorized FNS personnel to review records, books, and accounts as needed during hours of program operation to ascertain compliance. The FNS Regional OCR is responsible for reviewing, approving, and monitoring FNS/State agency agreements. State agencies are responsible for monitoring compliance with the agreements that cover their programs. State agencies are also responsible for reviewing, approving, and monitoring local agency and other subrecipient agreements.

CIVIL RIGHTS FACT SHEET 2: PUBLIC NOTIFICATION

Ref: FNS CR Instruction 113 Section IX

Each State and local agency public notification system must include the following three parts:

1. **Program Availability**—inform applicants, participants and potentially eligible persons of the availability of the program and how to apply.
 - This includes information pertaining to eligibility, benefits and services, the location of local offices, and hours of service.
 - The availability to all is communicated by outreach to community and grassroots organizations that serve underserved populations.
 - Information must be available in alternative formats for persons with disabilities.
 - State- and locally-produced materials should use graphics that convey the message of equal opportunity.

2. **Complaint Information**—applicants and participants must be advised at the service delivery point of their right to file a civil rights complaint and how to do so. This information can be communicated:
 - Through the prominent display of the “...And Justice for All” poster and appropriate nondiscrimination statement, both of which include the required information.
 - Through the use of a civil rights complaint form. This form collects the contact and other pertinent information about the complaint, and advises the potential complainant how to mail it to the appropriate federal level.

3. **Nondiscrimination Statement**—all materials and sources that mention the Special Nutrition Programs must include the current authorized nondiscrimination statement. The statement cannot be modified. If a State authorizes additional language, it must be in a separate statement. This requirement mandates the following:
 - Websites must contain a link to the nondiscrimination statement on the home page.
 - Publications, brochures, letters, and other print materials must contain the nondiscrimination statement.
 - Since media public service announcements, i.e. newspaper, TV, radio and Internet ads, are generally short in duration, the statement does not have to be read in its entirety.
 - If the material is too small to permit the inclusion of the full statement, the material will, at a minimum, include the statement, in print no smaller than the text, that “The (program name) is an equal opportunity provider.”
 - The statement does not have to be imprinted on materials such as cups, buttons, magnets and pens that identify the program, when size makes it impractical.



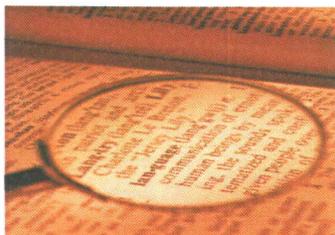
CIVIL RIGHTS FACT SHEET 3: LIMITED ENGLISH PROFICIENCY (LEP)

Ref: FNS CR Instruction 113 Section VII

Title VI of the Civil Rights Act of 1964 and the ensuing program regulations require State and local agencies to take reasonable steps to assure meaningful access to the information and services they provide. While there are no numerical thresholds, what is considered *meaningful* is based on the following four factors:

1. **The number or proportion of LEP persons served or encountered in the eligible population.** State and local agencies should assess prior LEP encounters to determine the breadth and scope of language services needed. In conducting these analyses, it is important to include language minority populations that are eligible for benefits but may be underserved because of existing language barriers. Other data that can be consulted includes census data for the area served, easily accessible at www.census.gov, data from school systems, community organizations and State and local governments. These sources may also be able to help in identifying populations for whom outreach is needed.
2. **The frequency with which LEP individuals come in contact with the program.** State and local agencies should also assess the frequency with which they have—or should have—contact with LEP persons from different language groups. The more frequent the contact with a particular group, the more likely more enhanced language services will be needed. However, even agencies that serve LEP persons infrequently should be prepared should an LEP individual seek services. This plan may be as simple as contracting with a commercially available telephonic interpretive service. Agencies should also consider, when applying this standard, whether appropriate outreach to LEP language groups should increase the frequency of these types of contacts.
3. **The nature and importance of the program.** A State or local agency needs to determine whether denial or delay of access to benefits or information could have serious or even life-threatening implication for the LEP individual.
4. **The resources available to the agency and costs.** An agency's level of resources and the costs involved may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, *reasonable steps* cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues can often be addressed by researching online resources and sharing of materials and services between agencies, advocacy groups and other local and state agencies. Where appropriate, training and hiring bilingual staff, contracting with telephonic interpretation services, pooling resources and standardizing documents, and using qualified community volunteers can also reduce costs. The Department of Justice also hosts a website at www.lep.gov with many resources for LEP compliance.



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CIVIL RIGHTS FACT SHEET 4: TRAINING

Ref: FNS CR Instruction 113 Section XI



Training is required so that people involved in all levels of administration of programs that receive Federal financial assistance understand civil rights related laws, regulations, procedures, and directives. This training may be carried out as part of on-going technical assistance.

The FNS Regional OCR and State agencies are responsible for training State agency staff. State agencies are responsible for training local agencies. Local agencies are responsible for training their subrecipients, including *frontline staff*. Frontline staff and their supervisors who interact with program applicants or participants must receive civil rights training on an annual basis. Specific subject matter includes, but is not limited to, the following:

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

CIVIL RIGHTS FACT SHEET 5: COMPLIANCE REVIEWS

Ref: FNS CR Instruction 113 Section XIII and Appendices B and C

Preaward Compliance Reviews

Preapproval or *preaward* reviews for civil rights compliance are required before federal financial assistance can be awarded. This applies to new local-level entities and subrecipient sites. Specific program requirements can be found in program regulations and in FNS 113 Appendices B and C; basically, new sites/sponsors/subrecipient applicants must provide information on federal and legal civil rights activities, including lawsuits and complaints, as well as other federal programs applied for, and assurance that records will be available for review when required. Preaward reviews can be conducted as desk reviews or onsite visits.

Requirements for applicants reapplying to operate FNS programs include the abovementioned assurances, as well as outreach efforts and demographic data analysis, bilingual access, and civil rights impact analysis when requested by FNS. Everything must be documented, from past to present to promises of future civil rights compliance.

Post-Award Compliance Reviews

State agencies are required to conduct *post-award* or routine civil rights compliance reviews of local agencies according to the frequency requirements found in specific program regulations and FNS 113 Section XII. State agencies may conduct additional or more frequent reviews where there is cause for concern involving civil rights compliance, i.e. an unusual fluctuation in the participation of racial or ethnic groups in a service area, or a number of discrimination complaints filed against the agency. In these cases, the FNS Regional or National Office of Civil Rights may also conduct special compliance reviews.

The required civil rights review content areas ask the fundamental question— whether potentially eligible persons have equal opportunity to participate in program. The review tool should break that question down—not just whether they have the poster, but can it be seen by applicants and participants? How do you keep participants aware of changes and complaint information—is it done through a network of community groups? When interviewed, do these groups indicate any pattern of hostility to one group? While not required, civil rights reviews best practices include interviews with local entity staff members, program participants and community group contacts.

In addition to the abovementioned, the review tool should also gather information about the following:

- Is the nondiscrimination statement appropriately used on program-related materials, including outreach brochures and other program materials distributed to the public?
- Is the staff aware of procedures to follow when an LEP individual requests information?
- How does the entity accommodate disabled applicants and participants?
- Is staff aware of civil rights complaint procedures, including confidentiality provisions and time concerns?
- Has staff been appropriately trained in civil rights requirements?
- Is the entity gathering racial/ethnic data appropriately?

All review reports and corrective actions must be documented in writing.

Resolution of Noncompliance

Ref: FNS CR Instruction 113 Section XIV

A finding of noncompliance may be the result of a routine review or an investigation. Noncompliance is a factual finding that any civil rights requirement is not being adhered to by a State or local agency or other subrecipient.

Most findings of noncompliance are unintentional and resolved by voluntary compliance. Examples of noncompliance include:

- Denying opportunity to apply for benefits,
- Providing benefits in a disparate manner because of membership in a protected class,
- Exclusion of members of a protected class from boards, and
- Selecting sites in a manner that denies access to members of a protected class.



CIVIL RIGHTS FACT SHEET 6: DATA COLLECTION AND REPORTING

Ref: FNS CR Instruction 113 Section XII and Appendix B

Note: Except for Food Distribution Programs on Indian Reservations (FDPIR) and the Commodity Supplemental Food Program (CSFP), Food Distribution programs are exempt from this requirement.

Civil rights laws mandate that federal assistance programs collect racial and ethnic data as outlined in FNS-113 Appendix B and specific program regulations. This data is used to determine how effectively the programs are reaching potentially eligible beneficiaries, identify where outreach is needed, select locations for compliance reviews, resolve civil rights complaints, and complete reports. State and local agencies are also strongly encouraged to analyze the data for outreach and other purposes.



The categories used to collect this data have been defined by the Congressional Office of Management and Budget for use in all federal programs. State agencies may use data collected by other Federal or State agencies (i.e. Department of Education).

Participants must be asked to self-identify their racial or ethnic group, but only after it has been explained and they understand that the collection of this information is strictly for statistical reporting requirements, and has no effect on the determination of their eligibility to participate in the program. If participants refuse to self-identify their racial or ethnic group, visual identification by a program staff member must be used to determine the participants' racial and ethnic category. Selection of one race and one ethnic group is acceptable when local agency staff performs visual identification.

Separate categories are used to collect and report race and ethnicity; ethnicity shall be collected first. Respondents should be offered the option of selecting one or more racial designations by noting *Mark one or more* or *Select one or more*. The designations for collection are:

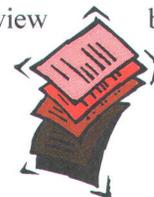
1. **Ethnicity**

- **Hispanic or Latino**—A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term *Spanish origin* can be used in addition to *Hispanic or Latino*.
- **Not Hispanic or Latino**.

2. **Race**

- **American Indian or Alaskan Native**—A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
- **Asian**—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- **Black or African American**—A person having origins in any of the black racial groups of Africa. Terms such as *Haitian* or *Negro* can be used in addition to *Black or African American*.
- **Native Hawaiian or Other Pacific Islander**—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **White**—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

The State agency must ensure that documentation for the data collected by subrecipient is on file and maintained for the required three years. Data obtained shall be made available at the time of each compliance review by the State agency or the Food and Nutrition Service's Regional Office. The State agency must ensure that access to data collected is limited to authorized personnel.

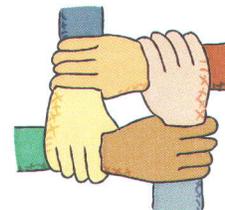


CIVIL RIGHTS FACT SHEET 7: COMPLAINTS OF DISCRIMINATION

Ref: FNS CR Instruction 113 Sections XV, XVI, XVII

Complaints of discrimination occur when applicants or participants allege that they were treated differently because of **race, color, national origin, age, sex or disability**. These bases are referred to as **protected classes**. Some examples of discrimination complaints may include:

- “This center discriminates against boys.”
- “The worker at the school cafeteria discriminated against me because I speak Spanish.”
- “I am in a wheelchair and cannot enter the school because it doesn’t have a ramp.”



Right to File

Applicants or participants alleging discrimination based on one or more of the protected classes have the right to file a complaint within **180 days** of the alleged discriminatory action.

Due to confidentiality and Privacy Act concerns, State and local agencies must advise complainants that their issues will remain confidential. **Important note:** As long as complainants are assured of their right to file a complaint at the Federal level, it is acceptable to try to resolve the issue at the State or local level. However, it is still advisable to hand them a complaint form just in case they would like to pursue the issue at the Federal level.

Acceptance

All complaints, whether written or verbal, must be forwarded to the Food and Nutrition Service’s Regional Civil Rights Director. To the extent feasible, anonymous complaints should be handled in the same manner as written or verbal complaints, based on available information.

Forms

Although not mandatory, it is highly recommended that State and local agencies develop a complaint form that can be given to an applicant or participant whenever an alleged discriminatory action occurs. The form should contain the address of the Regional Civil Rights Director so that the complainant can mail it directly; the following information should be requested on the form:

- Complainant’s name, address, telephone number (or other means of contacting the complainant),
- Specific location and name of the State or local agency delivering the service or benefit,
- Nature of the incident or action that led the complainant to feel discrimination was a factor,
- Basis(es) on which the complainant believes discrimination exists,
- Names, addresses, and telephone numbers of any other people who may have knowledge of the alleged discriminatory action, and
- Date(s) during which the alleged discriminatory action occurred.

Verbal Complaints

In the event that applicants or participants make allegations of discrimination verbally or in-person and refuse or are not inclined to place such allegations in writing, the person at the State or local agency to whom the allegations are made must write up the elements of the complaint for the complainant. Every effort should be made to have the complainant provide the same information mentioned in the **Forms** section above.

Processing Complaints

All complaints alleging discrimination on one or more of the protected classes must be processed within **90 days** of receipt. **Important note:** Time and confidentiality are of the essence. All complaints must be forwarded promptly to the Food and Nutrition Service’s Regional Civil Rights Director unless an approved State complaint procedure is in place. This will help to ensure that all complaints are processed within the appropriate timeframes.

CIVIL RIGHTS FACT SHEET 8: EQUAL OPPORTUNITY FOR FAITH-BASED AND/OR COMMUNITY-BASED ORGANIZATIONS

Ref: FNS CR Instruction 113 Section VIII

Faith-based and community-based organizations have a long history of involvement in Federal nutrition assistance programs and a tradition of supporting low-income people by providing a wide range of social services.

Federal nutrition assistance programs operate primarily through partnerships with State agencies, which in turn partner with local organizations. Generally, faith-based and community-based organizations participate in these programs through agreements with States, or through other local agencies that have agreements with States, rather than directly with the Federal government.

The USDA promulgated a regulation on July 9, 2004, to ensure the elimination of unwarranted barriers to the participation of faith-based organizations in USDA programs. The regulation ensures that no organization will be discriminated against in a USDA-funded program on the basis of religion, and also ensures that USDA-funded programs are available to all regardless of religion. The regulation, entitled *Equal Opportunity for Religious Organizations* is codified at 7 CFR Part 16.

This regulation ensures a level playing field for the participation of faith-based organizations and other community organizations in USDA programs by:

- Prohibiting discrimination for or against an organization on the basis of religion, religious belief, or religious character in the administration or distribution of Federal funds.
- Allowing a religious organization that participates in USDA programs to retain its independence and continue to carry out its mission, provided that direct USDA funds do not support any inherently religious activities such as worship, religious instruction, or proselytization.
- Clarifying that faith-based organizations can use space in their facilities to provide USDA-funded services without removing religious art, icons, scriptures, or other religious symbols.
- Ensuring that no organization that receives direct financial assistance from the USDA can discriminate against a program beneficiary, or prospective beneficiary, on the basis of religion or religious belief.

