

Civil Rights Training for USDA (TEFAP and CSFP)



USDA, Food and Nutrition Services
Civil Rights Division
May 2022

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Your Role

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

- Civil Rights training must be provided annually to any staff or volunteer member that has personal contact or they are handling personal information of the participant.
- At the end of this training, staff:
 - ✓ Should be able to identify a civil rights complaint if received
 - ✓ Should know what to do if they receive a complaint
 - ✓ Should understand that it is the basic right of the individual to file a complaint.
- A log should be kept when training has been completed and the information should be available during your monitoring visit.

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TEFAP Program Regulations:

- 7 CFR Part 250 and 251
- Sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (Public Law 93-86), as amended
- The Emergency Food Assistance Act of 1983 (Public Law 98-8), as amended
- FNS Instruction 113-1 and Appendix C

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What is Discrimination?

Discrimination is defined as the act of distinguishing one person or group of persons from others, either intentionally, by neglect, or by the effect of actions or lack of actions based on the protected classes.

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Protected Classes in TEFAP

The following are protected classes:

- Race
- Color
- National Origin
- Sex
- Disability
- Age
- Reprisal or Retaliation for prior civil rights activity in any program or activity conducted or funded by USDA

Note: Religious Creed is not a protected class for TEFAP.

What are Civil Rights?

The nonpolitical rights of a citizen; the rights of personal liberty guaranteed to U.S. citizens by the 13th and 14th amendments to the U.S. Constitution and by acts of Congress.



Civil Rights Legal Authorities

- Title VI of the Civil Rights Act of 1964 - Covers Race, Color & National Origin
- Civil Rights Restoration Act of 1987 - Clarifies the scope of the Civil Rights Act of 1964
- Section 504 of Rehabilitation Act of 1973; Americans w/Disabilities Act of 1990; and 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

7 CFR Parts 15, 15a, 15b, 15c

- USDA's implementing regulations for nondiscrimination in Federally assisted programs. Gives USDA agencies authority to develop Civil Rights requirements

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

- Gives equal footing to religiously affiliated organizations

Food and Nutrition Act of 2008, as amended

- Prohibits discrimination on the basis of race, color, sex, age, national origin, religion, political beliefs or disability

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996

- Enforces Title VI of the Civil Rights Act of 1964 and related statutes in block grant type programs.

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Civil Rights Legal Authorities

28 CFR Part 35

- Covers nondiscrimination on the basis of disability in State/local government services (public entities)

28 CFR Part 36

- Covers nondiscrimination on the basis of disability by public accommodations

28 CFR 42

- Covers nondiscrimination in Federally assisted programs

Executive Order 13166 - "Improving Access to Services for Person with Limited English Proficiency" (August 11, 2000)

"USDA 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, [p. 70771 - 70784] 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 4330-3

- Equal Opportunity Public Notification Policy

FNS Instruction 113-1

- Provides information on Civil Rights compliance and enforcement

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Areas of Civil Rights Compliance

- Public Notification Requirements
- Civil Rights Training
- Compliance Reviews
- Complaints of Discrimination
- Assurances
- Limited English Proficiency
- Disability Compliance
- Resolution of Noncompliance
- Data Collection

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Public Notification System

- 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 the program availability, program rights and responsibilities, the policy of nondiscrimination, and 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. At a minimum the nondiscrimination statement or a link to it must be include on the home page of the program information.

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Public Notification Requirements

- Publicize TEFAP to all, including underserved populations and the entities that service them;
- Provide appropriate information in alternative formats for persons with disabilities; and in appropriate language(s) for LEP persons;
- 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; and
- Display the “And Justice For All” poster in a prominent location.

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“And Justice For All” Poster

- Display the poster in a prominent location for all to view
- AD-475A (Green) is the version for the TEFAP program.



Nondiscrimination Statement (Revised May 2022) Full Statement

In accordance with federal civil rights 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 (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, 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 at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, 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:
(833) 256-1665 or (202) 690-7442; or

email:
program.intake@usda.gov

This institution is an equal opportunity provider.

Nondiscrimination Statement

- Include the nondiscrimination statement on all materials that describe TEFAP benefits; including websites.
- For radio or television public service announcements, the nondiscrimination does not have to be read in its entirety. A short statement is sufficient.

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Minimum (Short) Nondiscrimination Statement

- The long statement is to be used in most instances. The use of the shorter statement is an exception, not the rule and should only be used in special circumstances.
- If written material is too small to permit the full statement to be included, the material will at a minimum include the following statement in print no smaller than the text:

“This institution is an equal opportunity provider”

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Nondiscrimination Statement Exception

- A nondiscrimination statement is not required to be imprinted on items such as cups, buttons, magnets, pens, etc. that identify TEFAP when the size or configuration makes it impractical.

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Civil Rights Complaint Handling

- Right to File a Complaint:
Any person alleging discrimination 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, has a right to file a complaint within 180 days of the alleged discriminatory action.

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Civil Rights Complaint Handling

- All civil rights complaints, written, verbal or anonymous, shall be accepted and forwarded to the FSD Food Distribution Unit.
- Confidentiality is extremely important and must be maintained
- A complaint form may be developed, but the use of such forms cannot be a prerequisite for acceptance.
- The State agency will forward the complaint to the FNS Regional Office and DSS Office of Civil Rights.

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Contents Of A Civil Rights Complaint

- Name, address and telephone number, or other means of contacting the complainant;
- Specific location and name of the agency delivering the service or benefit;
- Nature of the incident or action that led the complainant to feel discrimination was a factor, and an example of the method of administration which is having a disparate effect on the public, potential eligible persons, applicants, or participants;

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Contents Of A Civil Rights Complaint (continued)

- The basis on which the complainant believes discrimination exists;
- The names, telephone numbers, titles, and business or personal addresses of persons who may have knowledge of the alleged discriminatory action; and
- The date(s) during which the alleged discriminatory actions occurred.

Note: The complaint form can be found online at:

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

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Assurances

To qualify for Federal assistance, written assurance that the program will be operated in compliance with all nondiscrimination laws, regulations, instructions, policies, and guidelines must be included in all agreements between agencies.

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

- Federal and State agencies (Federal-State Agreement)
- State agencies and local agencies/sponsors
- Local agencies/sponsors and sub recipients (if applicable)

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Limited English Proficiency (LEP)

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.

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LEP Requirements

Title VI and its implementing regulations require recipients of Federal assistance (State agencies, local agencies, or other sub recipients), to take reasonable steps to ensure “meaningful” access to their programs and activities for individuals with limited English proficiency (LEP).

(FNS Instruction 113-1, Section VII)

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LEP Requirements

What is Meaningful Access?

- Providing reasonable, timely, appropriate and competent language services at no cost to individuals with LEP.
- Failure to provide meaningful” access may be discriminating on the basis of national origin.

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LEP Requirements

Factors to consider 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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Limited English Proficiency (LEP) and Program Access

Language services:

- Applicants and participants cannot be asked to bring their own interpreters
- Children (under the age of 18) should not be used as interpreters
- Use qualified, competent language resources

Examples of language services:

- Bilingual Staff (must be fluent in the language)
- Telephone interpreter lines
- Oral interpretation services
- Written language services
- Community organizations and volunteers

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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 activity, 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

- Sections 504 and 508 of the Rehabilitation Act of 1973
 - prohibit discrimination based on disability in programs or activities receiving Federal 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 who apply for or participate in all FNS-funded programs.

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Disability Discrimination

Reasonable modifications must be made in policies and practices for persons with disabilities in order to access benefits.

This means that it is almost never appropriate to deny someone an auxiliary aid or service based on the fact that the requested accommodation runs counter to established ways of doing things (policies and practices).

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Disability Discrimination

Reasonable Modifications

A public entity shall make reasonable modifications in policies, practices, or procedure when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity. [28 CFR 35.130(b)(7)(i)]

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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 be in compliance 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 of the Civil Rights compliance areas.

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Routine/Post-Award Reviews continued

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?
- How are applicants and participants advised of their rights to file a Civil Rights complaint of discrimination?
- Are reasonable modifications 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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Conflict Resolution and Customer Service

- Conflict Resolution and Customer Service Techniques should be incorporated in each annual Civil Rights training for frontline staff to help ensure that any issues arise are resolved at the lowest level, as unresolved conflict may lead to a Civil Rights Complain.

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Conflict Resolution and Customer Service continued

Conflict Resolution Techniques:

- Take a deep breath and calm down
- Be objective and view the situation in a neutral way
- Be mindful of nonverbal communication
- Avoid person attacks, insults, or defensiveness
- Show genuine care and concern for the customer

Customer Service Techniques:

- Use plain language to explain policies and procedures
- Actively listen to the client
- Be proactive and make the extra effort
- Address the client by his/her name
- Ask for required documentation in a courteous way, don't rudely demand information

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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 school), and program participant (Complainant).
- Voluntary Resolution Agreements may be used to closeout a Civil Rights Compliance Review at the discretion of FNS CRD in lieu of issuing a written Compliance Review report with findings.

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Food For Thought

Staff and volunteers involved in the distribution of TEFAP commodities should ask themselves the following:



- Am I treating this person in the same manner I treat others?
- Have I given this person the opportunity to clarify all relevant factors or inconsistencies?
- Have I told this person exactly what information I need to make a determination on the application?
- Have I provided the person with the information he or she needs to make necessary decisions?

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Thank You For Being
Amazing Partners and
Advocates!

We Would Be Nothing
Without You!

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Questions?

- ❖ State of Missouri, Food Distribution Unit
- Vacant, Unit Manager

- Janet McCubbin, Food Program Representative
573 751-2399 | Janet.McCubbin@dss.mo.gov

- Deana DuMers, Food Program Representative
573-751-4328 | fsd.fdu@dss.mo.gov