

Civil Rights

NH Dept. of Education
Office of Nutrition Programs and Services

Civil Rights

- ▶ Everyone has the right to file a civil rights complaint for federal and state protected bases.
- ▶ This presentation will give you the information needed to:
 - Understand civil rights.
 - Know what to do if you are given a civil rights complaint.
 - Offer customer service to the complainant.
 - Understand where to go for conflict resolution.

Civil Rights Program Authorities

- Title VI of the Civil Rights of 1964
 - race, color, and national origin
- Civil Rights Restoration Act of 1987
 - clarifies the scope of the Civil Rights Act of 1964
- Sections 504 & 508 of the Rehabilitation Act of 1973
- Americans w/ Disabilities Act and ADAAA
 - disability
- Title IX of the Education Amendments of 1972
 - sex
- Age Discrimination Act of 1975
 - age

Civil Rights Program Authorities

- 7 CFR Parts 15, 15a & 15b
- 7 CFR Part 210 (NSLP)
- 7 CFR Part 215 (SMP)
- 7 CFR Part 220 (SBP)
- 7 CFR Part 225 (SFSP)
- 7 CFR Part 226 (CACFP)
- 7 CFR Part 245 (NSLP / SMP / SBP) [Eligibility]
- 7 CFR Part 250 and 247 (Food Distribution)

CR Program Authorities

- 28 CFR Part 42: Nondiscrimination in Federally Assisted Programs
- FNS Instruction 113-1 Appendix B (NSLP, SMP, SBP, SFSP, CACFP)
- Executive Order 13166 – addresses/improves access requirements for persons with Limited English Proficiency (LEP)
- 7 CFR Part 16, “Equal Opportunity for Religious Organizations” – allows religiously affiliated organizations to compete equally for USDA assistance
- USDA Departmental Regulation 4330-2 – prohibits discrimination in programs and activities receiving Federal financial assistance from USDA

Equal Opportunity for Religious Organizations (Regulation)

7 CFR Part 16:

- This regulation ensures a religious organization is eligible, on the same basis as any other eligible private organization, to access and participate in USDA assistance programs.

Equal Opportunity for Religious Organizations

- Accomplished by:
 - Prohibiting discrimination for or against an organization on the basis of religion, religious belief, or religious character in the administration & distribution of Federal funds;
 - Allowing religious organizations that participate in USDA programs to retain its independence and continue to carryout its mission, provided that it does not use USDA direct assistance to support any explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization.
 - Clarifying that faith-based organizations can use space in their facilities to provide USDA-funded service without removing religious art, icons, scriptures, or other religious symbols.
 - Ensuring that no organization that receives direct federal financial service can discriminate against a program beneficiary, or prospective beneficiary, on the basis of religion or religious belief.

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...”

For FNS programs discussed today, complaints are based on one or more of the six Federally protected bases:

Federally Protected CR Bases

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

Additional State Protected Classes

- ▶ There are additional State protected classes for you to be aware of. These are:
 - Sexual Orientation
 - Religion
 - Marital Status
 - Familial Status
 - Physical or Mental Disability
 - Gender Identity (just added in 2018)

Administered through the NH Commission for Human Rights – humanrights@nh.gov Contact them for questions about and complaint submission of state protected classes as well as conflict resolution.

Language Interpreter in NH

- ▶ The NH Commission for Human Rights offers a language interpreter. To access dial:
 - 603-271-2767 (or TD ACCESS: relay NH 1-800-735-2964), press #0
- ▶ You may also contact the Commission at:
 - humanrights@nh.gov and make an appointment for language interpretation.

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 CR laws and implementing nondiscrimination regulations.”
- A civil rights assurance must be incorporated in all agreements between State and local agencies
- FNS Instruction 113-1, Appendix B contains required language for NSLP, SMP, SBP, and CACFP

Assurances continued

- FNS will obtain a written assurance from each State agency and will ensure that State agencies obtain assurance from local agencies
 - State assurance accomplished via Fed–State Agreement (Form FNS–74)
- Retailer and vendor agreements must also include an assurance of nondiscrimination.
 - Many SFAs contract with Food Service Management Companies (FSMC) to provide food service to students. Thus, the SFA would be responsible for ensuring that their FSMC are in compliance with CR requirements.
- This assurance is 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.
- 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 and
 - the procedure for filing a complaint for both federal and state protected classes.
 - In NH, an email notification system is utilized.

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 Statements

At the minimum, the federal nondiscrimination statement should be on:

- Application Form(s)
- Notification of Eligibility or Ineligibility
- Expiration of Certification Notification
- Discontinuance Notification
- Program (Home) Web Page
- Public Information
- NH allows short NDS on menus

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, 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: 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.

Esta institución es un proveedor que ofrece igualdad de oportunidades.

Nondiscrimination Statement Continued

- **USDA Nondiscrimination Statement (NDS)**
 - **Short versions**
 - **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 forthcoming**

State agency also has a few posters in braille version.

“And Justice For All” Poster

- Display the poster in a prominent location for all to view
- In classrooms if students don't visit the cafeteria.
- AD-475A
 - New required version for all Supplemental Nutrition and School Meals programs
- Poster reflects current graphic



USDA United States Department of Agriculture

AND JUSTICE FOR ALL

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.)

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 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. Additionally, program information is available in languages other than English.

To file a complaint alleging discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.aser.usda.gov/complaint_filing_cust.html, or 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) 632-6992. Submit your completed form or letter 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

fax:
(202) 690-7442; or

email:
program.intake@usda.gov.

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Conforme a las leyes federales y a los derechos civiles, el Departamento de Agricultura de los Estados Unidos (U.S. Department of Agriculture, USDA), se prohíbe a esta institución discriminar por motivo de raza, color, nacionalidad, sexo, edad, discapacidad y represión o tomar represalias por actividades realizadas en el pasado relacionadas con los derechos civiles. (No todos los principios de prohibición se aplican a todos los programas).

Las personas discapacitadas que requieren medios alternos para que se les comunique la información de un programa (por ejemplo, braille, letra agrandada, grabación de audio, lenguaje de señas estadounidenses, etc.) deberán comunicarse con la agencia estatal o local responsable de administrar el programa o 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. La información del programa también está disponible en otros idiomas además del inglés.

Para presentar una queja por alegada discriminación, complete el formulario de quejas por discriminación del programa del USDA, AD-3027, que podrá encontrar en línea en http://www.ocio.usda.gov/sites/default/files/docs/2012/3pamish_Form_508_Complaint_8.9.12_0.pdf o en cualquier oficina del USDA o escriba una carta dirigida al USDA que incluya toda la información solicitada en el formulario. Para solicitar una copia del formulario de presentación de quejas, comuníquese al (866) 632-6992. Envíe su formulario o carta completos al USDA por:

correo:
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410

fax:
(202) 690-7442; o

correo electrónico:
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Esta institución ofrece igualdad de oportunidades.

Form AD-475A—Revised Poster/Notice December 2015

Ataşa (revisado) el Formulario AD-475A/Poster/Noticia diciembre 2015

Racial/Ethnic Data Collection

- “...State agencies, local agencies, and other subrecipients must provide for and maintain a system to collect the racial and ethnic data in accordance with FNS policy. These data will be used to determine how effectively FNS programs are reaching potential eligible persons and beneficiaries, identify areas where additional outreach is needed, assist in the selection of locations for compliance reviews, and complete reports as required.
- “...State agencies, local agencies, and other subrecipients are required to obtain data by race and ethnic category on potentially eligible populations, applicants, and participants in their program service area...Systems for collecting actual racial and ethnic data must be established and maintained for all programs. (FNS Instruction 113-1 Section XII)

Racial/Ethnic Data Collection

- Purpose: To determine how effectively FNS programs are reaching potentially eligible persons and beneficiaries
- As a means of monitoring civil rights compliance, state agencies shall establish a system for the collection of racial/ethnic data of each person applying for and receiving benefits.
- Applicants shall be assured that the information is required for and used for statistical purposes only and has no effect on eligibility criteria.
- Case workers are required to collect the data at the point of application.

Racial/Ethnic Data Collection

- If an applicant/parent does not consent to the self-identification method, the caseworker will, through visual observation, determine the applicant's race or ethnicity and mark applicable category.
 - [Children are not to be surveyed.](#)
- State and local agencies should compare their participant data with potentially eligible persons within their service areas
 - If disparities or areas of underrepresentation occur, it will be necessary to investigate the causes for it
 - Provide additional outreach as needed
 - Assist with selection of compliance reviews

Racial/Ethnic Data Collection

- In instances where racial/ethnic data is collected via online systems, provisions must be made for applicants/ participants to self-identify. The ability to verify this data by some manner of signing a printout, etc., must be available.
- Data must be collected/retained by the service delivery point for each program as specified in the program regulations, instructions, policies and guidelines.
- Records must be maintained for 3 years.
- Access restricted only to authorized personnel.
- Complete reports and submit data, as required to FNS.

Race and Ethnic Categories – Two Question Format

1. Ethnicity

- *Hispanic or Latino*
- *Not Hispanic or Latino*

2. Race (one or more of the following)

- *American Indian or Alaskan Native*
- *Asian*
- *Black or African American*
- *Native Hawaiian or Other Pacific Islander*
- *White*

Complaints of Discrimination

- All civil rights complaints regarding the federally protected bases shall be accepted and forwarded to the Office of the Assistant Secretary for Civil Rights. Complaints regarding the state protected bases shall be accepted and forwarded to the NH Commission for Human Rights. The individual must file complaint within 180 days from act of discrimination.
- Referral to USDA OASCR is currently required for complaints on the six protected bases noted earlier.
- Referral to the NH Commission on Human Rights is required for complaints on the state protected bases noted earlier.
- Complaints (either federal or state) may be written, verbal, or anonymous;
- State or local agencies may develop their own complaint forms; but the use of such forms cannot be a prerequisite for acceptance of a complaint.
- FNS must investigate complaints within 90 days.
- State agencies must maintain a separate log for tracking and confidentiality. State agency also sends out complaint procedure to all sponsors annually.

It is suggested that sponsors also maintain a log for tracking complaints.

Civil Rights Compliance Areas

- Assurances
- Public Notification
- Racial/Ethnic Data Collection
- Complaints of Discrimination
- Compliance Reviews
- Resolution of Noncompliance
- Civil Rights Training
- Disability Compliance
- LEP
- Citizenship Verification

Compliance Reviews

- To examine the activities of State agencies, Local agencies, and Sub-recipients
- To determine their adherence with civil rights as well as program requirements.
- FNS Civil Rights and Program staff review State agencies.
 - FNS staff and State agencies review local agencies.
 - Local agencies review their subrecipients.
- State agencies must report significant findings to the reviewed entity and to FNS.

Compliance Review Types

- There are three types of compliance reviews:
 1. Pre-Award Compliance Reviews
 2. Routine (Post-Award) Compliance Reviews
 3. Special Compliance Reviews

Pre-Award Compliance Reviews

- These reviews are conducted by the State Agency and are usually done as desk reviews of information provided by applicants in their official application to operate a FNS Federally-assisted program.
- No Federal funds shall be made available to a State or an institution until a Pre-Award Compliance Review has been conducted and the applicant has been determined to be in compliance with Title VI.

Pre-Approval / Pre-Award Compliance Reviews

FNS 113-1 notes: FNS & the State agency:

- Must determine that all State, local agency, or other subrecipient program applicants are in compliance with Civil Rights (CR) requirements [prior to approval](#) for Federal financial assistance;
- Based on a desk or onsite review of CR information provided by the program applicant
- Pre-approval/pre-award review report must be maintained in the appropriate program files;
- Program applicants and recipients must provide relevant and current CR information for any applications for approval of specific projects or significant changes in applications for continuation or renewal of assistance; and
- Additional requirements contained in Appendix B

Routine (Post-Award) Compliance Reviews

- Routine CR Compliance Reviews are a component of the FNS Management Review process.
 - Conducted jointly or independently by the CR staff
 - Examine the activities of State and Local agencies / subrecipients to determine that FNS-funded programs are being administered in accordance with civil rights requirements.
- The office performing the review must advise the reviewed entity, in writing, of the review findings and recommendations.

Routine (Post–Award) Reviews

Scope of State agency or FNS reviews of local agencies includes the following eight areas:

- 1) eligible persons and households have an equal opportunity to participate;
- 2) case records are coded by race or ethnic origin;
- 3) offices are displaying the “And Justice for All” poster in a prominent location;
- 4) nondiscrimination statement; statement to be included in program materials such as application, notices brochures.
- 5) availability of program information to eligible persons, program applicants and participants;
- 6) racial and ethnic data collection, and maintenance for 3 years;
- 7) complaint processing; and
- 8) training.

Special Compliance Review

- A Special Compliance Review may be conducted by the USDA Office of the Assistant Secretary for Civil Rights staff and/or FNS when there are significant Civil Rights concerns which have a direct impact on the delivery of FNS program services and/or benefits.
- Statistical data indicates that a particular minority group is not participating in or benefiting from the Program to an extent indicated by the population potentially eligible to participate in or benefit from the Program.

Special Compliance Reviews

- Reports of noncompliance made by other agencies need to be substantiated.
- Patterns of complaints of discrimination have developed that require follow-up.

Resolution of Noncompliance

- “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, local agency, or other subrecipient.
- Steps must be taken immediately to obtain *voluntary* compliance.
- Effective date of the finding of noncompliance is the date of notice to the State agency, local agency, or other subrecipient.

Civil Rights Training

Specific subject matter required, but not limited to:

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

Civil Rights Training

- State agencies are responsible for training local agencies on an annual basis.
- Local agencies are responsible for training their subrecipients, including “frontline staff” who interact with applicants or participants on an annual basis.
- New employees before participating in Program activities
- Volunteers must receive training

Civil Rights Training

- All staff should receive training on all aspects of civil rights compliance;
- Staff should be able to identify a civil rights complaint if received;
- They should know what to do if they receive a complaint;
- Understand that it is the basic right of the individual to file a complaint.

Disability Discrimination

- Sections 504 and 508 of the Rehabilitation Act of 1973 and USDA implementing Regulation, 7 CFR Part 15b, prohibit discrimination based on disability in programs or activities receiving Federal financial assistance.
- In addition, the 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 if they are potential applicants or participants in any FNS funded programs.

Disability Discrimination Continued

- 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.
- At times, different or special treatment may actually be necessary in order to ensure effective aids, benefits, and services are reasonable.

Disability Discrimination – ADAAA

- The Americans with Disabilities Act Amendments Act of 2008 (P.L. 110–325) impacts NSLP, SMP, and SBP as it expanded the definition of “disability”
- Major Life Activities now also includes “Major Bodily Functions” , which also includes, “...function of the immune system,...digestive, bowel, bladder,...and... functions”
 - Individuals who take mitigating measures to improve or control any of the conditions recognized as a disability, are still considered to have a disability and require an accommodation.

Bilingual Requirements and Program Access

Definition:

- Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.
- Recipients of Federal financial assistance have a responsibility to take “reasonable steps” to ensure meaningful access to their programs and activities by persons with Limited English Proficiency (LEP).

Bilingual Requirements and Program Access Continued

- Factors to consider in addressing LEP:
 - Number or proportion of LEP persons served or encountered in the eligible population.
 - 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.
 - In NH, LEP is addressed through the Commission for Human Rights. 1-800-735-2964 or 1-603-271-2767

Bilingual Requirements and Program Access Resources

- Population data sources
 - 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/>
 - LEP.GOV
 - <http://www.lep.gov/>
- ▶ NH Commission for Human Rights
humanrights@nh.gov or 603-271-2767

Verification of Citizenship or Immigration Status

This issue should never give rise to
discrimination.

Questions

**What are your
questions?**



Contact Information

- For more information:

USDA Food and Nutrition Service
Office of Civil Rights, Northeast Region
10 Causeway Street Room 501
Boston, MA 02222

or

NH Department of Education
Bureau of Nutrition Programs and Services
101 Pleasant Street
Concord, NH 03301

- Or contact:

Federal: Steve Miliano
Regional Civil Rights Director
stephen.miliano@fns.usda.gov
Office: (617) 565-6424
FAX: (617) 565-6473

State: Cheri White
Administrator, BNPS
cheri.white@doe.nh.gov
Phone: 603-271-3860
Fax: 603-271-1953