

**Department of Agriculture, Conservation and Forestry
(DACF)**

**The Emergency Food Assistance Program
(TEFAP)
&
Commodity Food Supplement Program
(CSFP)**

**CIVIL RIGHTS TRAINING
GUIDE**

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Agenda

Topics covered:

- ✓ Civil Rights Training
- ✓ Public Notification Requirements
- ✓ Complaints of Discrimination
- ✓ Assurances
- ✓ Racial and Ethnic Data Collection
- ✓ Limited English Proficiency (LEP)
- ✓ Disability Discrimination
- ✓ Compliance Reviews
- ✓ Resolution of Noncompliance
- ✓ Voluntary Resolution Agreements
- ✓ Verification of Citizenship

In order to assure Civil Rights compliance with all laws and regulations, TEFAP will conduct a compliance review as part of the monitoring visit.

Why do I Need Civil Rights Training?

Civil Rights training is required by the United States Department of Agriculture, Food and Nutrition Service for all individuals involved in the administration of programs that receive Federal financial assistance to ensure they understand Federal laws, regulations, instructions, policies, and other guidance.

Civil Rights Legal Authorities

Title VI of the Civil Rights Act of 1964

Protects people from discrimination based on race, color, and national origin in programs and activities receiving federal financial assistance.

Title IX of the Education Amendments of 1972

Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity.

Section 504 of the Rehabilitation Act of 1973

No otherwise qualified individual with a disability in the United States, shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Age Discrimination Act of 1975

Prohibits discrimination based on age in programs and activities receiving federal financial assistance. (Does not address employment).

Civil Rights Restoration Act of 1987 clarifies the intent of Congress as it relates to the scope of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, to ensure nondiscrimination in all programs and activities of a recipient, whether those programs and activities are federally funded or not.

Americans with Disabilities Act (“ADA”) of 1990/Americans with Disabilities Act Amendments Act (ADAAA) of 2008

Prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities. The ADA also establishes requirements for telecommunications relay services. The ADA Amendments Act of 2008 clarified the definition of “disability”.

7 Code of Federal Regulations (CFR) Part 15, 15a, and 15b - Non-discrimination in Federally Assisted Programs of the Department of Agriculture Effectuation of Title VI of the Civil Rights Act of 1964.

7 CFR Part 16 - Equal Opportunities for Religious Organizations

Ensures a level playing field for the participation of faith-based organizations and other community organizations in USDA programs.

Executive Order 13166 – “Improving Access to Services for Persons with Limited English Proficiency” (August 11, 2000)

USDA LEP Guidance - 79 Federal Regulation No. 229.

28 CFR Part 35: Nondiscrimination on the Basis of Disability in State/Local Government Services.

28 CFR Part 42: Nondiscrimination in Federally Assisted Programs.

USDA Departmental Regulation 4330-002 – Non-Discrimination Regulations

Additional Legal Authorities

FNS Instruction 113-1 and Appendix C for USDA Foods and TEFAP

What is Discrimination?

Discrimination is the act of illegally distinguishing between one person or group of persons from others either intentionally, by neglect, or by the actions or lack of actions based on their perceived or actual protected bases. There are two types of discrimination: disparate treatment (intentional) and disparate impact (intentional or unintentional).

Disability Discrimination

Definition of disability:

A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Major life activity means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, and reproductive functions.

(ADA Amendments Act of 2008)

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.

Protected Bases in TEFAP and CSFP

Federally protected bases of discrimination:

- 1) Race
- 2) Color
- 3) National Origin
- 4) Age
- 5) Sex (Including gender identity and sexual orientation)
- 6) Disability
- 7) Reprisal or retaliation for prior civil rights activity

Assurances

To qualify for Federal financial assistance, the program applicant 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. Appendices C and FNS Form 74 for Program-specific language.

Subrecipient agreements must also include a Civil Rights assurances 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. The purpose of a public notification is to ensure that people understand program availability, participants' rights and responsibilities, policy of nondiscrimination, and procedures for filing a complaint.

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.

Nondiscrimination Statement

All information materials and sources, including websites, 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 website. At a minimum, the full nondiscrimination statement or a direct hyperlink to it must be included on the home page of the program information.

State agencies and their subrecipients must:

- 1) Make program information available to the public upon request;
- 2) Prominently display the “And Justice for All” poster;
- 3) Inform potentially eligible persons, applicants, participants and grassroots organizations of programs or changes in programs;
- 4) Convey the message of equal opportunity in all photos and other graphics that are used to provide program or program-related information;
- 5) Provide appropriate information in alternative formats for persons with disabilities and in the appropriate language(s) for LEP persons.

Nondiscrimination Statement

USDA Nondiscrimination 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, audiotope, 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:

1. **mail:**
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or

2. **fax:**
(833) 256-1665 or (202) 690-7442; or

3. **email:**
Program.Intake@usda.gov

Guidelines for displaying the Nondiscrimination Statement:

All new materials **must** include the revised information for participants to file discrimination complaints.

All information materials and/or resources that are provided to applicants/participants that mention or reference the TEFAP and CSFP Programs must include the Nondiscrimination Statement. Any usage of the shortened Nondiscrimination Statement must be reviewed and approved by the Program Manager for the TEFAP and CSFP Program.

- Some examples requiring the Nondiscrimination statement are application forms, notification of eligibility or ineligibility, outreach flyers, brochures, newsletters, etc.
- All nutrition education materials that mention the TEFAP and CSFP Program must contain the Nondiscrimination Statement. Materials that provide a nutrition message with **no** mention of the TEFAP and CSFP Programs are **not** required to contain the Nondiscrimination Statement.
- Any Web sites used by authorized farms to inform the public about the TEFAP and CSFP Program must contain the Nondiscrimination Statement. It is not required that the Nondiscrimination Statement be included on every page of the web site. The Nondiscrimination statement or a link to the statement: [FNS Nondiscrimination Statement](#) **must be included on the home page.**

USDA Nondiscrimination Statement (NDS)

Short version:

USDA is an equal opportunity provider, employer, and lender.

Translations: Other languages are available on FNS CRD webpage.

“And Justice for All” Poster

Display the poster in a prominent location for all to view. (AD-475A July 2019, New required version)

Authorized agencies must take the following steps to ensure that the TEFAP and

CSFP Program does not discriminate against individuals:

- 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.
- Explain the TEFAP and CSFP Program nondiscrimination policy to all new staff. (New employees and volunteers must receive Civil Rights training appropriate to their roles and responsibilities, before participating in Program activities.)
- Serve all applicants and participants equally on a first-come, first-serve basis.
- Display the “And Justice for All” poster in a prominent location for all to view. Call the TEFAP and CSFP Program if copies of this poster are needed.

Compliance Reviews**Requirements:**

- ✓ 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.

There are three types of compliance reviews:

1. Pre-Award Reviews
2. Routine (Post-Award) Reviews
3. Special Reviews

Pre-Award/Pre-Approval Reviews

State Agencies, TEFAP sponsors, or other subrecipients 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:

1. Do printed materials contain the nondiscrimination statement?
2. Is the “And Justice for All” poster displayed appropriately?
3. Are program informational materials available to all?
4. Is data on race and ethnicity collected appropriately?
5. How are applicants and participants advised of their right to file a Civil Rights complaint of discrimination?
6. 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 school), 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.

Complaint Procedures

All TEFAP and CSFP Program applicants and/or participants have a right to file a complaint alleging discrimination based on race, color, national origin, age, sex, disability, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA, within 180 days of the alleged discriminatory action. Refer to the USDA

website [How to File a Complaint](#) for instructions on how to file a complaint.

- Potential complainants should be advised that they can file directly with USDA using the information provided in this training packet.
- Complaints shall be accepted and forwarded to the 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 and subrecipient agency.
- Confidentiality is extremely important and must be maintained.

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 or 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.

If you receive a completed complaint form from an applicant and/or participant, you must notify Gustav Nelson, TEFAP Director immediately by calling 207-287-7513.

After notifying the TEFAP Director you must submit the form by:

1. Mail it within **three (3) calendar** days directly to:
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Ave, SW
Washington, D.C. 20250-9410
2. Fax: (202) 690-7442; or
3. Email: program.intake@usda.gov

AND Notify the TEFAP/CSFP Director within **five (5) calendar days** that you received the complaint and have mailed it to the USDA.

If you receive a verbal complaint from an applicant and/or participant, direct the complainant to the Nondiscrimination Statement, **and** please send the following information to the TEFAP and CSFP Program Manager within five (5) days of receiving the complaint:

1. Name, address, and telephone number of the complainant;
2. The location and name of the organization or office where the alleged incident

occurred;

3. The nature of the incident or action;
4. The names, titles, and business addresses of persons who may have knowledge of the discriminatory action(s);
5. The date(s) during which the alleged discriminatory actions occurred; and
6. The basis for the alleged discrimination.

It is critical that the complaint process be followed closely to assure compliance with federal regulations. All agency employees and volunteers must be educated on procedures for processing allegations of discrimination.

Data Collection and Reporting

**Per FNS Instruction 113-1 Appendix C,
TEFAP is exempt from data collection requirements.**

USDA mandates the CSFP Program collect racial and ethnic participant data as a means of determining how effectively FNS programs are reaching potential eligible persons and beneficiaries and identifying areas where additional outreach is needed. Participating CSFP agencies need to collect data on each applicant/participant's race and ethnicity at the time of certification for this purpose. Agency employees and/or volunteers must first ask applicants/participants to voluntarily self-identify their racial group and ethnicity. If applicants/participants are uncertain, employees and/or volunteers may then assist by sharing the definitions listed below in the Race/Ethnicity Data Collection or use a visual assessment to determine the racial/ethnic category. An applicant/participant may be included in the group to which he/she appears to belong, identifies with, or is regarded as belonging to, in the community. Make sure the participant understands 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.

Data should be collected at the point of application and retained at the service delivery area.

Race/Ethnicity Data Collection

Two Question Format

1. Ethnicity (must select one of the following)
 - Hispanic or Latino
 - Not Hispanic or Latino

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

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

Limited English Proficiency

Definition- Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

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.

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.

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).

TEFAP and CSFP Programs must take reasonable steps to accommodate applicants/participants who self-identify as having Limited English Proficiency (“LEP”). Please contact the TEFAP Director if you require any materials to be translated.

Civil rights regulations prohibit discrimination in any program activity, so applicants and participants cannot be required to bring a translator or interpreter in order to apply for the TEFAP and/or CSFP Programs.

NOTE: Before translating any materials, call the TEFAP Director.

Population data sources:

- Interagency LEP website – mapping tool
 - <http://www.lep.gov/maps/>
- US Census Data
 - <https://www.census.gov/data.html>
- American Community Survey
 - <http://www.census.gov/acs>
- Migration Policy Institute's National Center on Immigrant Integration Policy
 - <http://www.migrationpolicy.org>

ACCESSIBILITY

Participating TEFAP and CSFP distribution sites must ensure physical accessibility for buildings and facilities, particularly to persons in wheelchairs and with mobility disabilities.

CUSTOMER SERVICE

Treat all applicants and participants with dignity and respect.

CONFLICT RESOLUTION

If there are complaints that are not civil rights related, work to resolve them. If they are civil rights related, please refer the customer to the Nondiscrimination Statement and follow the referral policy.

To complete the Civil Rights training please click on or copy and paste the link below to take the short quiz.

<https://forms.office.com/g/zYFh3AcLed>

For assistance or questions please contact the
TEFAP/CSFP Director:

Gustav Nelson
gustav.nelson@maine.gov
207-287-7513