

Executive Summary - FNS Instruction 113-1

The instruction has been revised to ensure increased accountability and efficiency at all levels – from local agencies to Headquarters FNS. The efforts to revise the instruction are the results of an intense partnering process over the past three years. The last major revision of the instruction was in the mid 1980s. Revisions to the instruction primarily reflect the legislative changes that have occurred over the past several years. The new document merges all of the previous, independent 113 series instructions into a single instruction. It provides a clearer explanation of roles and responsibilities, and it removes ambiguity regarding the process of managing complaints of discrimination. The title has been changed from Policy on Nondiscrimination to Civil Rights Compliance and Enforcement – Nutrition Programs and Activities. The following describes the major changes made to each section of the instruction.

Section I – Purpose

The bases for discrimination (race, color, national origin, age, sex, or handicap) were removed from the purpose statement and an all encompassing phrase was added, so that the last part now reads “...enforcement of the prohibition against discrimination in all FNS nutrition programs and activities, whether Federally funded in whole or not.”

Section II – Authority

Repealed citations were culled and several relevant citations were added:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-6
- Americans with Disabilities Act (28 CFR Part 35, Public Law 101-336, Title II, Subtitle A).
- Title IX of the Education Amendments of 1972, and USDA Implementing Regulation, 7 CFR 15a.
- Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, and USDA Implementing Regulation, 7 CFR 15b
- Age Discrimination Act of 1975 (45 CFR Part 91).
- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and Department of Justice Memorandum dated January 28, 1999 on Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant Type Programs.
- Civil Rights Restoration Act of 1987.
- Food Stamp Act of 1977, as amended.
- Enforcement of Title VI of the Civil Rights Act of 1964 B National Origin Discrimination Against Persons With Limited English Proficiency.
- USDA Departmental Regulation 4330-2, Activities Receiving USDA Financial Assistance.
- USDA Regulation 7 CFR 16, Equal Opportunity for Religious Organizations.

Program Appendices include additional authorities.

Section III - Policy

Several terms have changed in order to reflect current legislation, and several categories of protected classes have been added to certain programs. Now the policy reads:

The U.S. Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. **(Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TTY).**

The instruction provides additional clarification by explicitly stating the 8 protected bases for the Food Stamp Program and the Food Distribution Program on Indian Reservations and the 6 protected bases for all other FNS nutrition assistance programs.

Section IV - Applicability

This section was not changed. All programs and activities administered by FNS in which Federal financial assistance or other services are provided to the public by a State agency, local agency or other subrecipients are covered by this FNS instruction.

Section V - Definitions

Several new terms have been added to this revised instruction as result of new legislation and new OMB reporting requirements. Other new terms are the result of changes in how we operate. The addition of alternative dispute resolution (ADR) is an example. All of the definitions used in the instruction have been reworded where necessary to provide a clearer understanding of their meaning and application.

New definitions include: Alternative Dispute Resolution, Beneficiaries, Corrective Action Plan, Disability, Federal Financial Assistance with Commodities added later as a category, Local Agency or other subrecipient, Memorandum of Understanding, Participants, Program Compliance Review, Prohibited Bases, Project Area Special Compliance Retail Food Store (Retailer), Review, Standard Operating Procedures, State Agency, Subrecipient, Underserved Group or Community.

Section VI - Responsibilities

To help ensure accountability and compliance with this instruction we have clarified responsibilities and addressed delegations of authority where applicable.

- USDA's Office of Civil Rights is assigned staff responsibility for the development,

implementation, coordination and *enforcement* of all aspects of the Department's civil rights program.

- The FNS Administrator is assigned line responsibility for implementing a comprehensive civil rights program that ensures nondiscrimination compliance in all FNS programs and activities.
- Regional Administrators provide direction, leadership and resources to ensure proper implementation of the regional civil rights compliance program.
- Regional Civil Rights Directors in collaboration with appropriate regional program and administrative staff will provide technical and operational assistance, direction and leadership in implementing the civil rights policies of FNS programs, as well as, processing, managing and facilitating resolution of civil rights complaints in accordance with guidance from FNS headquarters Civil Rights Division.

Section VII - Limited English Proficiency

All of the provisions in this section are relatively new. State agencies are directed to consider a number of different factors in determining meaningful access for persons of limited English proficiency. Among the primary factors to be considered are the:

- number or proportion of LEP persons in the fully eligible service population,
- frequency with which LEP individuals come in contact with the program,
- importance of the service provided by the program, and
- resources available to the recipient.

Former Part One – Interagency Coordination and Responsibilities

This has been deleted as a section; however, the contents have been incorporated throughout the revised instruction.

Section VIII – Equal Opportunity for Religious Organizations

This section is a recent addition due to the promulgation of USDA Regulation 7 CFR 16, Equal Opportunity for Religious Organizations to ensure the elimination of unwarranted barriers to the participation of faith-based organizations in USDA programs.

Section IX - Public Notification

This section makes it clear that all FNS assistance programs must include a public notification system. Program availability was added as a primary function of the State public notification system, and a provision for web-based information was created. The purpose of a State public notification system is to inform potential eligibles, applicants and participants of:

- program availability,
- program rights and responsibilities,
- nondiscrimination policy, and
- procedures for filing a complaint.

Section X - Assurances

No changes. Compliance with all nondiscrimination laws, regulations, instructions and guidelines is required and, where applicable, the assurance can be incorporated into the Federal/State/local/subrecipient agency agreement.

As in the past, FNS Regional Offices are responsible for reviewing, approving and monitoring FNS/State agency agreements. State agencies are responsible for monitoring compliance with the agreements that cover their respective programs. State agencies are also responsible for reviewing, approving and monitoring local agency and other subrecipient agreements.

Section XI - Civil Rights Training

Two new areas of training have been added, and responsibilities for performing training have been clarified. This training may be carried out as part of ongoing technical assistance.

The Regional Offices and State agencies will be responsible for training the State agency staffs to include civil rights compliance in all aspects of program operations.

State agencies are responsible for training local agencies. Local agencies are responsible for training their subrecipients. Individuals identified as front line staff must be trained annually.

Specific subject areas include, but are not limited to:

- Collecting and using data,
- Effective public notification systems,
- Complaint procedures,
- Compliance review techniques,
- Resolution of noncompliance,
- Requirements for reasonable accommodation of persons with disabilities,
- Conflict Resolution, and
- Customer Service.

Section XII - Data Collection and Reporting

Recent OMB reporting requirements directed the changes made to this section. In addition, State and local agencies were given more specific responsibilities to perform trend analysis on potential eligible populations, applicants and participants identified by racial, ethnic and linguistic category in their program service area. The procedures to collect, evaluate, report and analyze this data are program-specific, and are set forth in the specific program administrative regulations, policies, instructions and guidelines.

Section XIII - Compliance Reviews

This section has been significantly revised based on statutory requirements, and has been rewritten to provide clearer instructions. While major headings are the same, the content has been augmented; notably, paragraphs on review content now include examples of data and information to be collected and questions to be asked to aid in making a review determination.

A paragraph on Corrective Action has been added.

Reports of alleged noncompliance made by the media, grassroots organizations or advocacy groups has been added to the list of situations for which a Special Compliance Review should be conducted.

Section XIV - Resolution of Noncompliance

Examples of prohibited discrimination were consolidated and a new one was added – *Selecting members for planning and advisory bodies in such a way as to exclude persons from membership on the basis of race, color,*

Negotiating with local agencies or subrecipients to achieve compliance was added to the responsibilities of the State agency.

The actions to be taken by each level of government in the process of resolving noncompliance have been further clarified to reflect USDA civil rights requirements and accountability criteria.

Former Part Six – Compliance Work Plan

This part was deleted.

Section XV - Complaints of Discrimination

Primary changes to this section reflect the requirements of the FNS Memorandum of Understanding with USDA OCR on complaint processing and resolution that directs FNS actions. Some specific changes to this section are:

- The complainant must be advised of confidentiality and Privacy Act applications. The complainant and the entity that the complaint is filed against will be encouraged to resolve the issue at the lowest possible level and as expeditiously as possible and in accordance with ADR guidelines.
- The use of a standardized complaint form is encouraged, and collaboration and coordination are encouraged during the revision or development of new forms or complaint related documents.
- A consent release provision and form were added.

Section XVI – Guidelines for Processing Civil Rights Complaints

This section contains information that was formerly included in the following section to add clarity. This section describes broad responsibilities of FNS while the following section is more specific.

Section XVII - Procedures for Processing and Resolving Complaints of Discrimination

Responsibilities of State agencies, local agencies or other subrecipients in regard to discrimination complaint processing are set out in USDA regulations implementing civil rights laws and, in some instances, in program regulations. State Agencies are required to:

- maintain a processing system for discrimination complaints;
- process complaints within the time frames established by Departmental regulations and agreements;
- submit a description of the agency's discrimination complaint/grievance processing system to the FNS Regional Office for review;
- forward all complaints alleging discrimination on the basis of age, except as noted in the program specific appendix, to the appropriate Regional OCR within 5 working days after receipt.

FNS Headquarters Civil Rights Division and USDA Office of Civil Rights will maintain responsibility for oversight of FNS Regional Office actions in regard to processing complaints of discrimination. This includes monitoring and evaluation during civil rights compliance reviews and ongoing monitoring and assessments of the complaint processing systems in place nationwide.

Appendices

These appendices are a major change to the instruction. They provide program specific guidance to include the legislative and regulatory authority, and the unique aspects of each program.

- Appendix A – Food Stamp Program
- Appendix B – Child Nutrition Program
- Appendix C – Food Distribution Programs
- Appendix D – Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and WIC Farmers' Market Nutrition Program (FMNP)
- Appendix E – provides sample complaint processing form letters
- Appendix F – depicts the complaint processing and procedures flow chart.