

## CIVIL RIGHTS COMPLAINT INVESTIGATION CHECKLIST

- Special Supplemental Nutrition Program for Woman, Infants and Children (WIC)
  - WIC Farmer's Market Nutrition Program (WIC FMNP),
  - the Senior Farmer's Market Nutrition Program (WIC SFMNP)

### INTRODUCTION

#### What is USDA-FNCS's role in Civil Rights Investigations?

USDA's Food Nutrition and Consumer Service (FNCS) is responsible for ensuring compliance with civil rights laws and regulations in programs and activities that receive Federal financial assistance from FNCS. This includes ensuring civil rights complaints are properly investigated and resolved.

#### What is this Document?

This document provides authorized State agencies with a basic checklist for conducting investigations into complaints of prohibited discrimination involving the Special Supplemental Nutrition Program for Woman, Infants, and Children (WIC), WIC Farmer's Market Nutrition Program (WIC FMNP), and the Senior Farmer's Market Nutrition Program (WIC SFMNP). It is intended only to provide a working tool for State agencies participating in these programs and authorized by FNCS to conduct first-line complaint processing.

**This checklist is not intended as a substitute for State-level procedures, or an explanation of Federal complaint processing requirements. For instance, it does not explain the requirement to submit decisions to FNCS for review and concurrence before issuing a final decision, processing timeframes, or the obligation to maintain an appropriate, confidential system for tracking civil rights complaints.**

#### Where can I find Additional Information?

For additional information on a State agencies' civil rights compliance and enforcement obligations, please see FNS Instruction 113-1, "Civil Rights Compliance and Enforcement – Nutrition Programs and Activities", or contact the FNCS Civil Rights Division.

### CHECKLIST

- ✓ **ASSIGN A NEUTRAL EMPLOYEE TO CONDUCT INVESTIGATION**

- Individuals named in complaint, family members, and direct subordinates of individuals named in the complaint are not neutral.



Practice tip: An otherwise-neutral employee assigned to investigate a complaint is still considered neutral even when a complainant subsequently alleges the employee is mishandling the investigation. Allegations that the State agency's investigation has been mishandled may be addressed through the appeals process.

## ✓ IDENTIFY AND DOCUMENT ALLEGATIONS OF DISCRIMINATION

- Identify and document allegations of prohibited discrimination that fall within the jurisdiction of FNCS (even if the alleged discriminatory act is also prohibited under state rules). These allegations are the target of the investigation.
- Document allegations the state Agency will be investigating in a letter to the complainant. State agencies are responsible for understanding the types of allegations of prohibited discrimination that fall within FNCS's jurisdiction.



Practice tip: Allegations that a person with a disability did not receive a requested modification or accommodation necessary to ensure equal program access fall under FNCS's jurisdiction.

## ✓ IDENTIFY AND APPLY THE APPROPRIATE LEGAL FRAMEWORK TO ANALYZE THE ALLEGATIONS

- The legal framework sets out the questions in order to determine whether prohibited discrimination occurred.
- The legal framework determines the types of evidence and lines of inquiry required to investigate the claim appropriately.
- State agencies are responsible for understanding the legal frameworks associated with the Federal civil rights laws and regulations that apply to the WIC program.



Practice tip: Title VI of the Civil Rights Act of 1968 ("Title VI") prohibits discrimination on the basis of race, color, or national origin, and served as the model for several statutes that prohibit discrimination on other grounds. The U.S. Department of Justice (DOJ)'s Title VI Legal Manual provides a good overview of Title VI legal principles. It can be found online by visiting the DOJ website at <https://www.justice.gov/crt/fcs/T6manual1>. While these principles

are broadly applicable, State agencies should be alert to the fact that some issues may be treated differently under other civil rights statutes.



Practice tip: State agencies and others receiving Federal funds from FNCS often have a duty to modify program rules to ensure qualified individuals with a disability an equal opportunity to participate in and benefit from FNCS fund programs, and to ensure effective communication. State agencies may fail to meet this duty even if they treat individuals with disabilities in exactly the same way they treat those without disabilities. Claims that responding officials failed to make reasonable modifications in order to accommodate a complainant's disability are analyzed under a different legal framework than claims that an individual with a disability was treated differently than someone without a disability. Investigators should consult 7 CFR 15b, and other appropriate sources of authority for more information and obtain evidence to address specific requirements.



Practice tip: State agencies and others receiving funding from FNCS have a duty to make programs accessible to Limited English Proficient (LEP) individuals. The investigator should consult USDA's LEP guidance - *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency* (November 28, 2014) - for more information and to obtain evidence to address specific requirements.

✓ **OBTAIN AND DOCUMENT EVIDENCE SUFFICIENT TO SUPPORT A DECISION ON ALL ALLEGATIONS OF PROHIBITED DISCRIMINATION**

At a minimum, include:

- A copy or summary of the complaint.
- An interview with the complainant.
- A response from the person or unit accused of discrimination (the "Respondent").
- Interviews with any relevant witnesses.
- Relevant records such as applications and benefits correspondence.
- Copies of applicable policies and regulations.
- Comparative evidence or data showing how the Respondent treated other, similarly situated individuals.
- Document interviews in a contemporaneous record, such as interview notes.



Practice tip: If the Respondent and Complainant agree on any of the facts, the investigator should note their agreement and narrow attention to what remains to be proven.



Practice tip: To strengthen the investigation, ensure the Complainant has a chance to address the Respondent's explanation for events, and obtain and document evidence addressing any direct contradictions between Complainant's statements and Respondent's statement. For example, suppose a SFMNP participant claims the State agency improperly denied her application for WIC benefits during the certification process because she did not provide a paycheck as proof of income, and the Respondent insists that policy requires a paycheck stub to verify income. In such a case, the investigator should obtain the relevant written policy, discuss with Respondent, discuss with Complainant, and properly document each interview.

#### **PROVIDE A WRITTEN NOTICE TO THE COMPLAINANT CLEARLY EXPLAINING THE AGENCY'S DECISION**

- Prepare a written notice to the complainant of the agency's decision (such as a letter of findings, letter of decision, or similar document) that clearly explains the grounds for the decision.
- Address all claims over which FNCS has jurisdiction and which the State Agency is authorized to investigate in the written notice explaining the decision.
- Summarize the steps taken to investigate the claims, apply the correct legal framework, describe the relevant evidence and reach a decision on each claim.
- Ensure conclusions reached are supported by documented evidence.
- Include the right to appeal to USDA's Office of the Assistant Secretary for Civil Rights using the following language:

If you disagree with this decision, you may appeal to the Office of the Assistant Secretary for Civil Rights at the U.S. Department of Agriculture. You must do so within 90 days of receiving this letter. To appeal this decision, write to:

U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
Stop 9430  
1400 Independence Avenue, S.W.  
Room 212-A, Whitten Building  
Washington, D.C., 20250