

United States Department of Agriculture

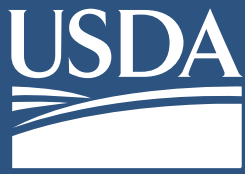
# Civil Rights Training

## **Food Distribution Program on Indian Reservations (NAFDPIR Conference MN)**

Civil Rights Division

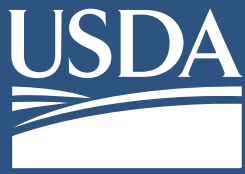
USDA, Food and Nutrition Service

October 17, 2022



## Agenda

- Civil Rights Coverage and Legal Authorities
- Areas of Compliance
  - Assurances
  - Public Notification Requirements
  - Race and Ethnicity Data Collection
  - Complaints of Discrimination
  - Civil Rights Training
  - Limited English Proficiency (LEP)
  - Disability Access Compliance
  - Compliance Reviews
  - Resolution of Noncompliance



## Civil Rights Authorities

Title VI of the Civil Rights Act of 1964

**Race, Color, and National Origin**

Civil Rights Restoration Act of 1987

**Clarifies the scope of the Civil Rights Act of 1964**

Section 504 of the Rehabilitation Act of 1973; Americans w/Disabilities Act of 1990; and the Americans with Disabilities Act Amendments Act of 2008

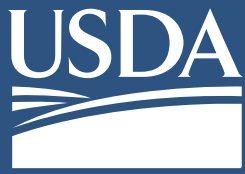
**Disability**

Title IX of the Education Amendments of 1972

**Sex**

Age Discrimination Act of 1975

**Age**



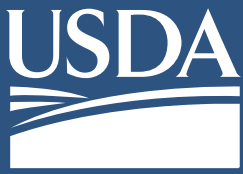
## Civil Rights Authorities

### 28 CFR Part 35

Covers nondiscrimination on the basis of disability in State/local government services

### 28 CFR Part 42

Covers nondiscrimination in Federally assisted programs



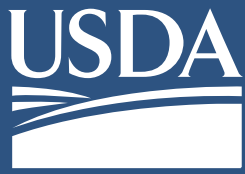
## Civil Rights Authorities

7 CFR Parts 15, 15a, 15b

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



## Civil Rights Authorities

USDA Departmental Regulation 4330-002

Prohibits discrimination in programs and activities receiving Federal financial assistance from the USDA

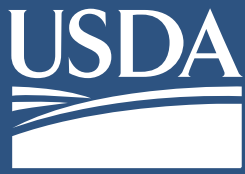
*"USDA Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency"* (79 Fed. Reg. No. 229, Friday, [p. 70771 – 70784])

USDA LEP Policy Guidance

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

FNS Instruction 113-1 and Appendix C (FDPIR)

Provides information on Civil Rights compliance and enforcement



## Civil Rights Program Authorities

Executive Order 13988 - "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation," (January 20, 2021)

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

7 CFR Parts 250, 253 and 254

FDPIR regulations



## 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...”

Protected classes for FDPIR:

Race

Color

National Origin

Age

Disability

Sex (including gender identity and sexual orientation)

Religion

Political Beliefs





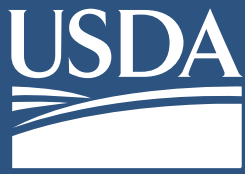
## Assurances

To qualify for Federal financial assistance, an application must be accompanied by a written assurance that the program or facility to receive financial assistance will be operated in compliance with all nondiscrimination laws, regulations, instructions, policies, and guidelines.

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

- Federal Agency and Indian Tribal Organizations (ITOs) or State agency
- ITOs and subrecipients

**(See FNS Instruction 113-1, Appendix C or FNS Form 74)**



## 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
  - the procedure for filing a complaint



# Elements of Public Notification

## **Program Availability**

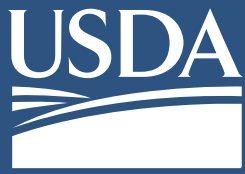
Inform applicants, participants, and potentially eligible persons of their program rights and responsibilities and the steps necessary for participation

## **Complaint Information**

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**

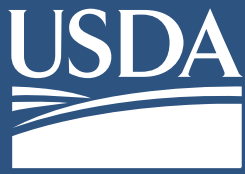
All information materials and sources, including websites, used by FNS, State agencies, ITOs or other subrecipients to inform the public about FNS programs must contain a nondiscrimination statement. The statement is not required to be included on every page of the program website. At a minimum the nondiscrimination statement or a link to it must be included on the home page of the program information.



## Elements of Public Notification

ITOs/State agencies must:

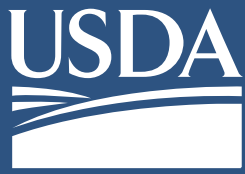
- Make program information available to the public upon request
- Prominently display the "And Justice for All" poster
- Inform potentially eligible persons, applicants, participants and grassroots organizations of programs or changes in programs
- Convey the message of equal opportunity in all photos 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 Statement (NDS)

### Update all documents, pamphlets, websites, etc. with the 2022 NDS as follows:

- Websites must be updated within 90 days of the date of the memorandum.
- Documents, pamphlets, brochures, etc. using 2015 NDS language must be updated when current supply on hand is exhausted or by September 30, 2023
- All new printing must use the 2022 NDS.
- Translations of the NDS are forthcoming
- Nondiscrimination Statements: <https://www.fns.usda.gov/cr/fns-nondiscrimination-statement?msclkid=757cf4ebd13511ec8520f6047ba73cbe>



# Nondiscrimination Statement

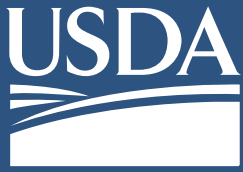
In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), religious creed, disability, age, political beliefs, 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 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.

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 (833) 620-1071, 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:

- 1. mail:**  
Food and Nutrition Service, USDA  
1320 Braddock Place, Room 334  
Alexandria, VA 22314; or
- 2. fax:**  
(833) 256-1665 or (202) 690-7442; or
- 3. email:**  
[FNSCIVILRIGHTSCOMPLAINTS@usda.gov](mailto:FNSCIVILRIGHTSCOMPLAINTS@usda.gov)

This institution is an equal opportunity provider.



United States Department of Agriculture

# Nondiscrimination Statement (Spanish)

De acuerdo con la ley federal de derechos civiles y las normas y políticas de derechos civiles del Departamento de Agricultura de los Estados Unidos (USDA), esta entidad está prohibida de discriminar por motivos de raza, color, origen nacional, sexo (incluyendo identidad de género y orientación sexual), credo religioso, discapacidad, edad, creencias políticas, o represalia o retorsión por actividades previas de derechos civiles.

La información sobre el programa puede estar disponible en otros idiomas que no sean el inglés. Personas con discapacidad que requieran medios alternos de comunicación para obtener información sobre el programa (por ejemplo, Braille, letra grande, cinta de audio, lenguaje de señas americano), debe ponerse en contacto con la agencia (estatal o local) donde solicitaron los beneficios. Las personas sordas, con dificultades auditivas o con discapacidades del habla pueden comunicarse con el USDA a través del Servicio Federal de Retransmisión al (800) 877- 8339.

Para presentar una queja por discriminación en el programa, el reclamante debe llenar un formulario AD-3027, formulario de queja por discriminación en el programa del USDA que puede obtenerse en línea en: <https://www.fns.usda.gov/sites/default/files/resource-files/usdaprogram-discrimination-complaint-form-spanish.pdf>, en cualquier oficina del USDA, llamando al (833) 620-1071, o escribiendo una carta dirigida al USDA. La carta debe contener el nombre del demandante, la dirección, el número de teléfono y una descripción escrita de la acción discriminatoria alegada con suficiente detalle para informar al Subsecretario de Derechos Civiles (ASCR) sobre la naturaleza y fecha de una presunta violación de derechos civiles. El formulario AD-3027 completado o la carta debe presentarse por:

**(1) correo:**

Food and Nutrition Service, USDA  
1320 Braddock Place, Room 334  
Alexandria, VA 22314; o

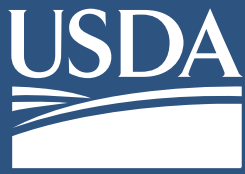
**(2) fax:**

(833)-256-1665 , o (202)-690-7442; o

**(3) correo electrónico:**

[FNSCIVILRIGHTSCOMPLAINTS@usda.gov](mailto:FNSCIVILRIGHTSCOMPLAINTS@usda.gov)

Esta institución es un proveedor que ofrece igualdad de oportunidades.



# Nondiscrimination Statement

At a minimum, the full Nondiscrimination Statement must be on:

- Application form(s)
- Notification of eligibility or ineligibility
- Notification of adverse action
- Program (Home) webpage (or a link to it)
- Public information, including program literature





# Nondiscrimination Statement

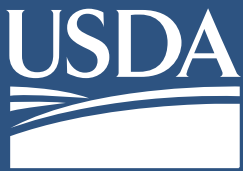
## USDA Nondiscrimination Statement

### 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**

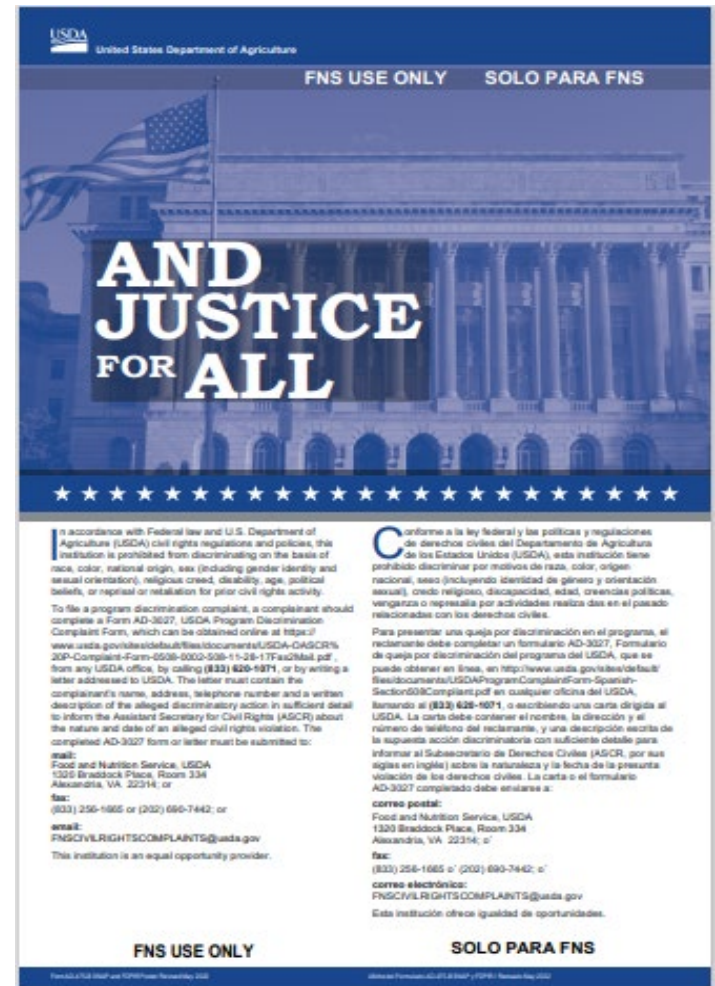
### Translations

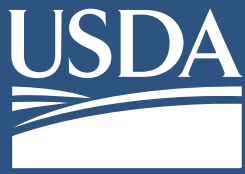
- **Available on the FNS Website**



# “And Justice For All” Poster

- Display the poster in a prominent location for all to view
- Required version: AD-475B is for SNAP & FDPIR





## Race and Ethnicity Data Collection

As a means of monitoring Civil Rights compliance, ITOs/State agencies shall establish a system for the collection of race and ethnicity data of each person applying for and receiving benefits.

### Purpose:

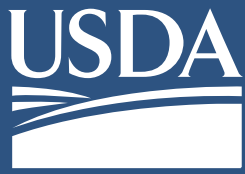
- To determine how effectively FNS programs are reaching potentially eligible persons and participants,
- To identify areas where additional outreach or services are needed
- To assist in the selection of locations for compliance reviews, and
- To complete reports, as required. (Race and ethnicity data is submitted to FNS using the FNS 101 Report)

## Race and Ethnicity Data Collection

- Data should be collected at the point of service and the implementing ITO will retain it for three (3) years.
- Informed participants that provision of race and ethnicity data is requested solely for the purpose of determining the State's compliance with Federal civil rights laws and has no effect on eligibility criteria.
- Notify the public that provision of race and ethnicity data is voluntary.
- Collect ethnicity before race.

## Race and Ethnicity Data Collection

- Provide an option to select one or more races.
- Notify the participant that another method of data collection will be used to collect the data which will be recorded in the data system if they decline to self-identify.
- Access restricted only to authorized personnel.
- Submitted as requested to FNS.



## **Race and Ethnicity Categories - Two Question Format**

### **1. Ethnicity**

*Hispanic or Latino*

*Not Hispanic or Latino*

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

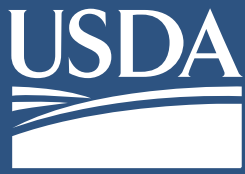
*American Indian or Alaska Native*

*Asian*

*Black or African American*

*Native Hawaiian or Other Pacific Islander*

*White*



## Complaints of Discrimination

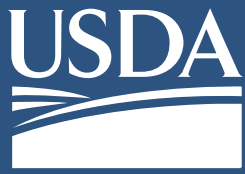
- Applicants or participants allege different treatment based on protected class(es)
- Protected classes in SNAP:
  - ✓ Race
  - ✓ Color
  - ✓ National origin
  - ✓ Age
  - ✓ Sex (including gender identity and sexual orientation)
  - ✓ Disability
  - ✓ Religion
  - ✓ Political Belief
- Retaliation or Reprisal



## Complaints of Discrimination

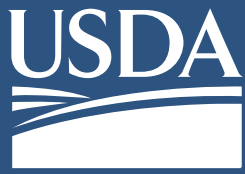
- Participants have the right to file discrimination complaints.
- ITOs/State agencies are required to inform participants of the option to file a complaint with the USDA.
- If the ITO/State agency has its own discrimination complaint system, the complainant must be informed that appeals may be made to the USDA.





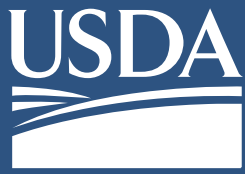
## Complaint Processing Procedures

- Complaints must be filed within 180 days from the alleged act of discrimination.
- ITOs/State agencies must accept all complaints and forward complaints to FNS within 5 calendar days.
- Age-based Complaints involve FMCS and must be referred to FNS Civil Rights Division within 5 working days.
- Complaints may be written, verbal, or anonymous.



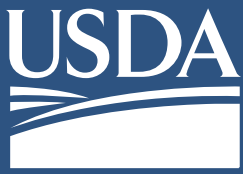
## Complaint Processing Procedures

- Confidentiality is extremely important and must be maintained.
- ITOs/State agencies may develop their own complaint forms, but the use of such forms cannot be a pre-requisite for acceptance.
- ITOs/State agencies must maintain a separate log reflecting only civil rights complaints.



## 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 of 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.



# Complaints of Discrimination

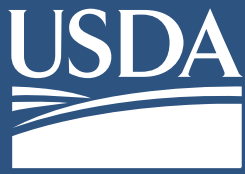
- USDA complaint form

- English version:

- <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>

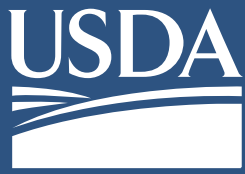
- Spanish version:

- [http://www.ocio.usda.gov/sites/default/files/docs/2012/Spanish\\_Form\\_508\\_Compliant\\_6\\_8\\_12\\_0.pdf](http://www.ocio.usda.gov/sites/default/files/docs/2012/Spanish_Form_508_Compliant_6_8_12_0.pdf)



## Civil Rights Training

- ITOs/State agencies must train:
  - Staff on an **annual basis**.
  - Subrecipients, including “frontline staff” who interact with participants on an **annual basis**.
  - New employees before participating in program activities must receive training.
  - Volunteers must receive training appropriate to their roles and responsibilities.



## Civil Rights Training

All staff should receive training on all aspects of Civil Rights compliance, including, but not limited to:

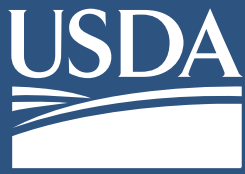
- Collection and use of data
- Effective public notification system
- Complaint procedures
- Compliance review techniques
- Resolution of noncompliance
- Requirements for reasonable modifications for persons with disabilities
- Requirements for language assistance for individuals with limited English proficiency
- **Conflict resolution**
- **Customer service**

# Limited English Proficiency (LEP) and Program Access

## ➤ **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

- Recipients of Federal financial assistance have a responsibility to take reasonable steps to ensure meaningful access to their programs and activities by persons with LEP.
- Failure to provide “meaningful” access to persons with LEP could be discrimination on the basis of national origin.



## **LEP and Program Access**

What is Meaningful Access?

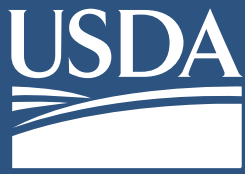
Providing reasonable, timely, appropriate and competent language services at no cost to individuals with LEP.



## LEP and Program Access

### 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

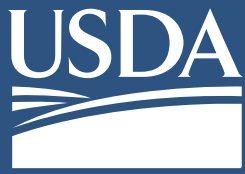


## LEP and Program Access

- ITOs/State agencies must conduct assessments to determine the language profile for their State, taking into account regional differences and updating as appropriate.
- Translation of vital documents is required.
- Oral translations and notification of free interpretation services is required.
- Staff training regarding how to provide LEP populations with meaningful access is paramount (frontline staff).

## LEP and Program Access

- Language services:
  - Applicants and participants cannot be asked to bring their own interpreters
  - Children should **not** be used as interpreters
  - Use qualified, competent language resources
  
- Examples of language services:
  - Bilingual staff
  - Telephone interpreter lines
  - Oral interpretation services
  - Written language services
  - Community organizations and volunteers



# LEP Population and Data Sources

Population data sources:

- Department of Justice site: LEP.GOV  
<http://www.lep.gov/maps/>
- 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/>

## Disability Access

- 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.

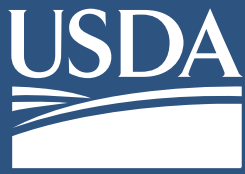
(ADA Amendments Act of 2008)

## Disability Access

- There is an obligation to ensure communication with individuals with disabilities is as effective as communication with others.
- Providing qualified sign language interpreters or other auxiliary aids and services for persons with hearing disabilities may be necessary to effectively communicate with these applicants and participants.
- Ensure that members of the public are provided reasonable modifications and auxiliary aids and services in order to access program information, applications and assistance (i.e. Braille, large print, and audio tape).

## Disability Access

- As programs and offices modernize, it is imperative that 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 Other Power-Driven Mobility Devices.
- Programs must provide access for service animals.



## Compliance Reviews

Examine the activities of ITOs/State agencies and subrecipients to determine Civil Rights compliance.

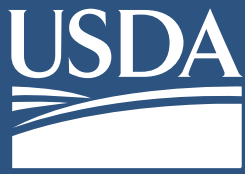
- FNS Civil Rights and Program staff review ITOs/State agencies.
- ITOs/State agencies review their subrecipients.
- Significant findings must be provided in writing to the reviewed entity and to FNS.



## Compliance Reviews

There are three types of compliance reviews:

- Pre-Award Compliance Reviews
- Routine (Post-Award) Compliance Reviews
- Special Compliance Reviews

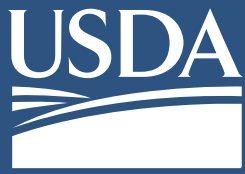


## **Pre-Award Compliance Reviews**

ITOs/State agencies and subrecipient agencies must comply with Civil Rights requirements prior to approval for Federal financial assistance.

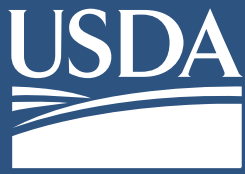
## Routine/Post-Award Reviews

- ✓ FNS and ITOs/State agencies must conduct routine compliance reviews as identified by FNS Instruction 113-1 and program-specific regulations and policies.
  
- ✓ 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?
  - Is data on race and ethnicity collected appropriately?
  - How are applicants and participants advised of their right to file a Civil Rights complaint of discrimination?
  - Are reasonable modifications appropriately made for people with disabilities?



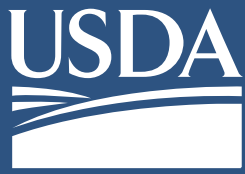
## Special Compliance Reviews

- 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



## 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 ITO, 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 Food and Nutrition Service, Civil Rights Division and the recipient or sub-recipient (State agency or ITO).
- 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.

# Questions





## Contact Information

Tamara Earley

Regional Civil Rights Officer

Midwest Region

USDA Food and Nutrition Service

Office: (312) 353-6657

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Sharon Dafondanouto

Regional Civil Rights Officer

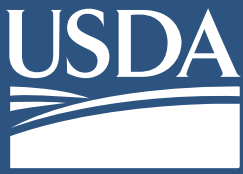
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